

1 (Defendant's Exhibit 104-3 entered into evidence)

2 MR. PATTERSON: One second. I just don't want to
3 see my email, but for the Court, I've put on the screen the
4 email from Mr. Cooley to Ms. Goott, August 23rd at --

5 THE WITNESS: Hold on, hold. Let me get reading
6 glasses.

7 MR. AURZADA: No, no, Mr. Loya

8 THE COURT: No, no. That's not for you.

9 THE WITNESS: Sorry. Sorry.

10 MR. PATTERSON: And I'll leave it to the Court,
11 but --

12 THE COURT: Court's going to put on his reading
13 glasses. Okay. This one's for me.

14 THE WITNESS: All right. Sorry, Judge.

15 THE COURT: No, no, no. I see that they're
16 prepared to stipulate, not that they --

17 MR. PATTERSON: Okay.

18 THE COURT: Not that there's agreement on
19 stipulation.

20 MR. PATTERSON: Okay. We're going to let them do
21 that. That's fine, Judge.

22 THE COURT: I'm not letting them do anything. I
23 just -- I don't see anything that that confirms agreement on
24 both parties.

25 MR. PATTERSON: That's fine, and you don't need --

1 We don't need a comment, Mr. Cooley. That's -- I got it.

2 MR. COOLEY: (indiscernible), sounds like. There
3 are more things I could say, but the email speaks for
4 itself.

5 BY MR. PATTERSON:

6 Q So, back Mr. Loya to Exhibit No. 3 -- 104-3, is an
7 email dated June 2017 -- June 26, 2017. And who is Doug H-
8 U-T-H?

9 A I don't know. I think it's one of the credit guys/

10 Q Mr. Moran. Who is that?

11 A He's a credit guy in Vitol in Houston.

12 Q In Vitol, he's a credit --

13 A Person. I think he's a credit person.

14 Q Okay. And Mr. Colvin?

15 A Think it's another one as well.

16 Q All right. So June the 26th, 2017. We are entering --
17 this is from Mr. Kuo. "We are entering into a JV with GCAC
18 doing business in the wholesale and retail asphalt space."

19 Do you see that?

20 A Yes.

21 Q Why would mister -- well, all JVs got approved through
22 you that involved more than one transaction, right?

23 A Yes.

24 Q And so had you approved this joint venture?

25 A It was not submitted to me for approval.

1 Q It wasn't?

2 A No.

3 Q Mr. Kuo is going to come in here and he's going to
4 testify that he never brought this to you?

5 A No, no. He -- we had discussed it whenever he
6 mentioned it.

7 Q Because we just looked at an email where you were on
8 where he said, hey this this has arisen, right? You want me
9 to go back? You see here, May 2017. "I spoke with Mike
10 briefly this afternoon about an asphalt opportunity." See
11 that?

12 A Yeah.

13 Q Okay. So that's May the 3rd, 2017.

14 A Right.

15 Q June the 26th, "We are entering into a JV."

16 A It hasn't been approved.

17 Q And you approved it.

18 A No, I didn't approve it.

19 Q Why would he say, we're doing it?

20 A He's not. We -- he would have said, we are in a JV. I
21 never approved the JV. And in fact, we made that clear
22 there was going to be a JV later on.

23 Q Later on.

24 A But we never --

25 Q Not before this, right?

1 A Well this is not -- of being approved.

2 Q Right.

3 A And it's not approved, a JV.

4 Q Okay. That's your recollection. Mr. Kuo may have a
5 different recollection.

6 A He would be wrong.

7 Q Would it be -- would you be surprised if I told you
8 he's testified differently?

9 A I would, yes.

10 Q Okay. Why would that surprise you?

11 A Because I never approved a JV.

12 Q Okay. "AJ Brass is our main point of contact with GCAC
13 and he is currently looking to vet a counterpart or a
14 prompt-ish sale." Right? "Can you please assist him with
15 this?" So you're doing credit for GCAC or Mr. Brass, right?

16 A We're going him a favor.

17 Q Vitol does favors?

18 A Yeah.

19 Q Really?

20 A Sure.

21 Q Okay. So you're just doing him a favor loaning out
22 your credit department for this guy, just because.

23 A We provide them assistance.

24 Q Okay. Why? Because you all were in business together?

25 A And good will. We always do favors. You get good

1 will.

2 Q Because you're in business together, right? Joint
3 venture?

4 A No, because you do business with a lot of people. You
5 do favors. They pay him back.

6 Q All right. "FYI, we plan on having this JV signed for
7 July 1st" --

8 A It isn't --

9 Q Right? June the 26th, few days later. Few business
10 days, right? This email just wrong?

11 A Well, putting a date to July 1 when it hasn't been
12 approved, yes. It's wrong.

13 Q So Mr. Kuo --

14 A Being very optimistic, that's what he --

15 Q Or dishonest. One extreme or the other, right?

16 A (indiscernible). He's just probably putting a bit of
17 push on the credit guys to do this quickly.

18 Q Or --

19 A A prompt-ish sale.

20 Q Or he's gotten approval and you don't remember.

21 A No, I would remember that.

22 Q Really?

23 A Yes, because I remember saying don't -- we're not doing
24 it.

25 Q Right, but we also talked about a meeting that you had

1 a vivid memory of, right?

2 A Yeah, yeah, but I know where I'm agreeing and
3 disagreeing. Whatever. Don't do that.

4 Q Now at this stage, June the 26th, there were documents
5 prepared reflecting this potential joint venture, wasn't
6 there, between Vitol and GCAC --

7 A I don't know that.

8 Q -- right?

9 A I don't know that.

10 Q Right? And in fact, there are also documents that
11 reflect Vitol's purchase of the position of Rio in the prior
12 joint venture between Rio and GCAC; isn't that correct?

13 A I don't know that.

14 Q You don't?

15 A No.

16 Q No recollection of that?

17 A No.

18 Q Even though you do recall telling the Court that you
19 took Rio's position,, right?

20 A Yes.

21 Q Why would you not document that?

22 A I don't know if there are documents or not.

23 Q I know. Why wouldn't you÷

24 A Not document it?

25 Q Yeah.

1 A I don't know.

2 Q What do you mean, you don't know?

3 A I don't know what -- in what form we took over their
4 position. If we bought their inventory, then we had the
5 inventory. There'd be no documents, as an example. You
6 want more examples?

7 Q Sure.

8 A It could be that we took over the lease on the tankage.
9 Then it would be just simply a -- the tankage company saying
10 now Vitol is the one who's paying for the lease. I don't
11 know the details of how we took over their position, and
12 therefore I don't know what documentation (indiscernible).

13 Q And you likewise you don't know what position you took
14 over, right?

15 A Details of what, no. I know we have tankage and I
16 don't know the rest.

17 Q Now you do know there was tankage?

18 A Huh? Well, I know that we used -- tankage
19 (indiscernible) control in order to provide security for us
20 to provide financing.

21 Q You do remember that?

22 A Yes.

23 Q Okay. What else do you remember?

24 A I just remember having security on the financing. That
25 was -- that is in my area.

1 Q From Rio? I thought you were financing GCAC.

2 A No, no. We have the control of the tankage, however
3 that came about. We had the control of the tankage. We can
4 provide financing to GCAC.

5 Q That's because you control the money and the inventory
6 that way, right?

7 A No, the money already been paid to whoever supplies the
8 product. We don't control the money. Money's gone to the
9 supplier, but we control the inventory.

10 Q So when it's sold, you control the money.

11 A When it's sold, first when it's released, not when it's
12 sold, when it's released is when the risk is. You don't
13 release it unless you have security.

14 Q But the money came to Vitol since they owned the
15 inventory, right?

16 A Yes.

17 Q Okay. We're going to come back to that because that's
18 really important. I'm going to write it down, right. So we
19 don't forget. Vitol owns the inventory. That means the
20 money comes to Vitol.

21 A On a sale by Vitol.

22 Q Well, who else would it be by? You own the inventory,
23 right?

24 A No, but --

25 Q Who else owns the inventory?

1 A Your sentence is incomplete.

2 Q Did you own the inventory or no? Throughout the whole
3 relationship with GCAC, was there a moment in time you,
4 Vitol, didn't own all the inventory?

5 A When the inventory was released, it's a matter of risk.

6 Q Listen to my question. Was there a moment in time in
7 2017 or 2018 in which -- forget about what kind of
8 transaction, right. But was there a moment in time or one
9 barrel or one contract in which Vitol didn't own a security
10 or whatever -- you're calling it security. Was there a
11 moment in time that there was one asset, one piece of
12 inventory that Vitol didn't own, ever?

13 A I don't know that.

14 Q You just said you wouldn't do it otherwise.

15 A I wouldn't do it otherwise.

16 Q Okay, then who would?

17 A -- security?

18 Q Would someone do it? Would you allow one of your
19 traders to do that?

20 A It would be a mistake. It would not be allowed.

21 Q That's right. It would be a mistake. You wouldn't let
22 them, would you?

23 A I would not approve that.

24 Q And you haven't reviewed this loan, this extension of
25 credit, you haven't reviewed it over and over since 2018 --

1 A I have not.

2 Q -- with GCAC?

3 A No, I have not.

4 Q Really? You don't care?

5 MR. AURZADA: Objection. Argumentative.

6 THE COURT: Sustained.

7 BY MR. PATTERSON:

8 Q Why haven't you looked at it?

9 A I don't have to. I mean basically we had security.

10 Q I know you don't have to.

11 A And we have -- and when we have the product we expect
12 to get paid.

13 Q Right. And it's all your inventory.

14 A He himself call me to say, (indiscernible) want pay me.

15 Q Right, and it's all your inventory, right?

16 A No. He took it. We --

17 Q How did you let him take it?

18 A That was a mistake.

19 Q Who let him take it? You're -- now you're suggesting
20 that he came and took your inventory? That's really why
21 you're suing him?

22 A No, it was released by mistake without security.

23 Q Who released it?

24 A Eric.

25 Q When did he release it?

1 A It was it was sometime during the transaction, we
2 started releasing inventory without security, as I'm told,
3 the explanation of why we haven't gotten paid.

4 Q Explanation from whom?

5 A Eric.

6 Q So Eric said it was his mistake that Vitol didn't get
7 paid?

8 A (indiscernible).

9 Q That's what you just said.

10 A I said, he released inventory for GCAC.

11 Q Which was a mistake. You said --

12 A No, it's -- my view, it was a mistake.

13 Q Right.

14 A Trust him and release it without security.

15 Q No.

16 A That's what I said.

17 Q You said you wouldn't do it.

18 A I wouldn't do it. I -- he did it, and I consider that
19 a mistake.

20 Q He works for you, right?

21 A Yes.

22 Q How long?

23 A How many years --

24 Q Yeah.

25 A -- before this or --

1 Q Yeah.

2 A -- or --

3 Q Yeah.

4 A Can't remember. Maybe six years, eight years.

5 Q How many times has he made this mistake?

6 A I don't know. That was the first time.

7 Q No, I didn't ask you if it was the first time. I said,
8 how many times did he make this mistake?

9 A Which mistake? Release product without security?

10 About \$12 million worth.

11 Q How many times did Mr. Kuo make this mistake?

12 A I don't know.

13 Q More than once?

14 A Yes.

15 Q More than twice?

16 A Probably.

17 Q Are you counting an occurrence as each piece of
18 inventory or each date of occurrence?

19 A Any time he released it.

20 Q All right. On more than one --

21 A -- inventory leave our control that was taking an
22 unacceptable risk.

23 Q Right, and he's going to acknowledge that when he comes
24 in here?

25 A I don't know what he's going to acknowledge.

1 Q Well, didn't you -- you didn't confront him about this,
2 this huge mistake?

3 A Yes. We had several discussions.

4 Q Okay. So he's going to acknowledge that --

5 A -- know what he's going to do.

6 Q He should, right?

7 A I don't know what he's going to do.

8 Q And that's a reason. That's the reason that GCAC and
9 Mr. Brass ended up owing Vitol money, isn't it?

10 A What is the reason? Be more specific.

11 Q The release, this mistake Mr. Kuo made in releasing
12 inventory.

13 A Releasing --

14 Q -- security.

15 A -- security allowed AJ to not pay us.

16 Q That's the reason, in your view, why Vitol's owed
17 money, right?

18 A In my view, that's how we got into this mess in the
19 first place.

20 Q Right. And if he gave it to -- I'm sorry go ahead.

21 A Trusted him.

22 Q I'm sorry?

23 A Eric trusted AJ.

24 Q right.

25 A GCAC. He shouldn't have.

1 Q Right. And so if Mr. Kuo mistakenly gave him this
2 inventory with security, right --

3 A Released it.

4 Q -- released it, Mr. Brass certainly didn't take it
5 improperly, did he? It was given to him. Right?

6 A I'm not saying AJ took it improperly. I mean, AJ
7 didn't pay for it. It was released to him.

8 Q Yeah.

9 A He owed the money for it.

10 Q Voluntarily. It was voluntarily released, right?

11 A Yeah.

12 Q Yeah. Right. And I assume I'm going to see an email
13 immediately afterwards to Mr. Brass saying, hey, that was a
14 mistake. Right?

15 A I don't know when. I think Eric became aware of the
16 mistake much later. I'm just -- I'm speculating.

17 Q I thought -- when did you talk to him about it?

18 A In probably March of 2018, when I became aware of it.

19 Q How did you become aware of it? I was walking in the
20 trading floor and I hear Eric having a heated conversation
21 and I listened to it. It sounds like he's talking to AJ.
22 When he hangs up, I said, why are you talking to AJ? We
23 don't do business with him anymore. We stopped doing
24 business in December. No, because he owes me. He owes me
25 money. He hasn't paid us and he's coming up with excuses

1 not to pay. How much is it? He gave me a number and I
2 immediately went and got accounting to start working on it.
3 And over a period of time we got to the final number, which
4 was much higher than what he told me.

5 Q You remember this, March 2018.

6 A Roughly March. I think it was maybe February.

7 Q No, you said March.

8 A Okay. Maybe February. Correcting myself.

9 Q Okay, so when was it?

10 A February/March. That period. Sometime
11 (indiscernible).

12 Q The mistake was discovered February or March 2018,
13 right, by you?

14 A By me.

15 Q Mr. Kuo already knew.

16 A Yeah.

17 Q All right. And you went in and you said, I'm going to
18 find out what happened, right?

19 A No, I said, I want to know how much he owes me and how.
20 Explain it to me.

21 Q Well, how else would you find out how much he owes you,
22 if you didn't find out what happened, right?

23 A Right. I mean, first you have to explain to me how it
24 happened, how did we get the situation, how much money are
25 we talking about.

1 Q Right.

2 A What is he proposing, what he's going to pay us. Thake
3 through it. And the same time --

4 Q You're -- this is your conversation with Mr. Kuo?

5 A Yes.

6 Q Okay. And what did he do? What did he say?

7 A He told me that he had been releasing product to AJ,
8 trusting him to pay for it, and as the bills came due, he
9 wasn't paying and he was coming up with different stories
10 and avoiding the whole issue and he was putting pressure on
11 him. When I told him to get on there and tell him we need
12 to get paid, Eric came back and insisted that I -- insisted
13 that I talk to AJ. He wanted to talk to me and he needed to
14 talk to me and I took the phone call where AJ proceeded to
15 say, tried to discuss different terms to pay the money he
16 owed. I said, no. I wanted to be paid now. He came back
17 and he was offering different payments and then through Eric
18 continued to offer different payment terms.

19 Q I guess my question is, lawyers and Vitol told us over
20 and over that there was a loan agreement and this was a loan
21 and if that was the case, wouldn't you already know the
22 payment term? I mean, wouldn't you know that it was due?
23 Wouldn't you know what the installment was? Why, at the
24 very end March of 2018, you for the very first time are
25 trying to figure out what's owed; it doesn't make sense to

1 me. Can you explain it?

2 A Yea, easily.

3 Q Okay.

4 A So it wasn't a loan. It was a series of product
5 releases where at the beginning we're doing business, we'll
6 release it against security. He stopped providing security.
7 Eric continued to provide him product. Every time providing
8 product, he had payment terms and he just stopped paying. I
9 became aware of it. Eric was well aware of it. I became
10 aware of it February or March.

11 Q Because, see, this is -- and I guess I'm trying to fit
12 together because your lawyers over here, they filed this
13 lawsuit and they told a particular story and I'm going to
14 take -- ask the Court to take notice of the first amended
15 complaint. It is on the exhibit list, 104-34, but it is the
16 pleading that was filed by Vitol.

17 MR. AURZADA: No objection, Your Honor.

18 THE COURT: So noted.

19 BY MR. PATTERSON:

20 Q And so, because this is what they say happened. I
21 understand what you're saying, right, and there would have
22 been a release and there would have been money going back
23 and forth for their joint venture, right. That makes sense,
24 right?

25 A No.

1 Q Okay.

2 A No.

3 Q But they say Vitol separately agreed to finance GCAC's
4 operations. Is that what you did? I thought you said you
5 financed transactions.

6 A We finance the business of marketing that. We financed
7 business. We finance the inventory. We financed the
8 different components. We financed the storage.

9 Q You understand that there's a little bit difference
10 there, right? Vitol is in the business of oil, vertically,
11 right? We talked about this. Vertically, Vitol is oil.
12 Transportation, mixing, delivery, storage. But your lawyers
13 say you finance their operations.

14 MR. AURZADA: Your Honor, can I ask him --

15 BY MR. PATTERSON:

16 Q Right?

17 MR. AURZADA: -- tell me where he's reading in the
18 --

19 MR. PATTERSON: Right on your -- I'm sorry. Thank
20 you.

21 BY MR. PATTERSON:

22 Q Your lawyer said Vitol separately agreed -- separately
23 -- to finance GCAC's operation. You see that?

24 A Where?

25 Q Right there on your screen.

1 A Okay.

2 Q That's not what you're telling me happened, right?

3 A It's exactly what I'm telling you what happened.

4 Q You financed their operations?

5 A Yes, and it tells you right there. Go back to where
6 you say. Go back to it. "Including the purchase and
7 storage of asphalt."

8 Q Right, including. But not limited to, right? It's
9 their operations. You financed their business, right? Is
10 that what you did?

11 A The marketing of asphalt.

12 Q -- marketing. I said, you financed their business.

13 That's what your lawyer said. I'm just trying to see if
14 that's what you said.

15 A Yes.

16 Q You did. So now you financed more than just
17 transactions. You financed their business.

18 A Well transactions, you have to deliver, you have to
19 blend it. You have to do --

20 Q Of course.

21 A You have to make product that's marketable.

22 Q Right. Right. One hundred percent.

23 A That's what Vitol was financing.

24 Q Okay. So you agree with this now. You agree you're
25 your lawyer said?

1 A (indiscernible) .

2 Q I'm sorry?

3 A That's what I've been doing is -- now, always.

4 Q Okay. And you've got an outline of a financing
5 agreement?

6 A Do I have one? Did I get one?

7 Q Did you get one?

8 A A financing agreement?

9 Q Yeah. You know what that is?

10 A Yeah, I mean --

11 Q You do?

12 A It could take different forms in a --

13 Q But --

14 A -- bank, whatever, but --

15 Q I thought you told me -- again, correct me if I'm wrong
16 -- but I thought you told me that Vitol doesn't use written
17 agreements, that you would finance a transaction with no
18 writing.

19 A No, no. You asked me if I know the financing agreement
20 is. I know. I know in my personal life. I know.

21 Q Listen to my question.

22 A I answered your question.

23 Q No, you didn't. So I asked you earlier, correct me if
24 I'm wrong, I asked you and you answered that Vitol does
25 financing transactions with no writing.

1 A That's correct.

2 Q Right. Why would your lawyer say that you received a
3 draft of the outline of the financing agreement? Would you
4 just throw that away?

5 A I don't know. We do -- Vitol does transactions without
6 the financing agreement. If they had a finance agreement
7 here, better.

8 Q So now maybe there was one? Is that what you're
9 suggesting?

10 A I don't know if there was one or not. I do not know
11 that.

12 Q I think you testified under oath that you're not aware
13 of one.

14 A I --

15 Q I asked you. Remember we went through these questions?

16 A I said that I don't know if there was one or not.
17 That's no different.

18 Q I understand. I understand. Your lawyer said that you
19 provided working capital to GCAC. Is that true?

20 A Yes.

21 Q You did? And did you wire that money to them?

22 A I don't know how we did it. I think working capital
23 were mainly paying the bills, like the purchase of
24 inventory.

25 Q You write him a check?

1 A I don't know how we did it. I don't know the details.

2 Q They did this without your knowledge as CEO? I thought
3 you told me that you were the guy who approved these kinds
4 of transactions.

5 A No, that I approved a joint venture. That's what I
6 told you.

7 Q Yeah.

8 A Yes. This was --

9 Q But if it's a loan, you also said you don't do loans.
10 Vitol does not do loans. That's -- wasn't that what you
11 told me?

12 A My parlance, to me it's financing. We provide
13 financing. I told you that earlier.

14 Q That's right.

15 A We as Vitol provide financing.

16 Q That's right. Remember, we went through to make sure
17 that our words mean the same things, right?

18 A And we found there was a difference.

19 Q That's right. Financing is when you transact a trade
20 without receiving the money up front.

21 A No, that's what you were stipulating. For me,
22 financing is providing the funds in order to acquire the
23 product and finance the cost of marketing it. That's
24 financing. You were saying that it was a loan for -- a
25 formal loan. Vitol didn't do.

1 Q Your lawyer said, Debtor obtained money from Vitol. Is
2 that true or false? Why is that so difficult?

3 A It's difficult because the definition of money. I mean
4 if it's currency, I don't know.

5 Q Currency. Money is currency. Let's agree to that,
6 okay?

7 A No, let's not agree. I mean, money could be value. It
8 could be inventory.

9 Q No, I'm telling you, money is currency.

10 A I don't know.

11 Q Really? You sued this man for two-and-a-half years and
12 you don't know if he got any money from you?

13 A I don't know if he got any cash. I know that the
14 value, the \$10 million of product that he didn't pay for.
15 That's the value. That's the --

16 Q No. No. I think you said that Mr. Kuo released it to
17 him voluntarily.

18 A No. He released it --

19 Q Yeah.

20 A He released it with no security.

21 Q That's right. He released it.

22 A Yes, on --

23 Q Right?

24 A On the -- it was given to him for him to pay.

25 Q No. Now you're adding things. That's not what you

1 said. You want to add some stuff to that, now? There were
2 conditions to the release?

3 A Yes, you pay --

4 Q Okay, we're --

5 THE COURT: I agree. Folks, we got to -- again --

6 MR. PATTERSON: I apologize.

7 THE COURT: We've got to get the conversation.

8 No, I think it's everybody, but just one question, one
9 answer.

10 MR. PATTERSON: Right.

11 THE COURT: Want to make sure there's not a
12 conversation, there's more of a question/answer format,
13 okay?

14 BY MR. PATTERSON:

15 Q What were the conditions?

16 A You expect to get paid for it?

17 Q And those were in writing?

18 A When you sell, somebody an expectation -- there's an
19 expression to get paid.

20 Q It was assumed, is what you're saying.

21 A -- assuming. That's understood.

22 Q What was it -- where do I read it?

23 A That's how you do in your transactions. I'm giving you
24 the product. You're going to pay for it.

25 Q That's just the way it works, what you're saying.

1 A Way it is.

2 Q Okay. Okay. I'm not questioning you. I'm trying to
3 understand what you're saying. You're saying, that's just
4 the way it works. It's not in writing. No one said it.
5 Everyone just understood it. Right?

6 A If I want to sell -- if you want to purchase from me in
7 order to get the product, for AJ would be to provide
8 security and we'll release it to you. You buy it from me,
9 but you don't get it until you provide security.

10 Q Okay.

11 A The mistake was releasing that sale to AJ without
12 security that provided him the opportunity to not perform,
13 not pay for it to defraud Vitol, to steal from Vitol,
14 however you want to put it.

15 Q You're trying to explain it. I'm trying to get a
16 better explanation. All right? So let's go back to this
17 money. They said the Debtor obtained money. Mr. Brass
18 obtained money from Vitol. Is that true or is that false?

19 A If we define money as currency, I --

20 Q Yes.

21 A -- don't know.

22 Q Money is currency.

23 A I don't know.

24 Q So when you went back to try to figure out how much AJ
25 allegedly owes you, you didn't figure that out? Did you ask

1 someone, how much money did we give this guy?

2 A No, I didn't ask that. I --

3 Q Really?

4 A I was told how much product was given to this guy.

5 Q I'm talking about money. Your lawyer -- your lawyers
6 said money. How much money?

7 A Define money as currency?

8 Q Yes.

9 A -- don't know.

10 Q and my follow-up question was, you didn't ask and find
11 out before you sued him?

12 A I did not.

13 Q Okay. Your lawyer said that Mr. Brass willfully and
14 maliciously caused injury to Vitol. You see that on your
15 screen?

16 A Yes. When -- actions described above.

17 Q Okay, I just asked if you saw it.

18 A Yes.

19 Q All right. What did Mr. Brass do -- let's start in
20 general terms -- that caused the injury to your company
21 Vitol while you were there.

22 A In general, I have nothing to do with this statement.

23 Q I want to know generally whether it relates to this or
24 not. I want you to tell me what he did that injured your
25 Vitol while you were there.

1 A Failed to pay for product that was delivered to him as
2 well as failed to pay for hedging losses that he instructed.

3 Q All right. What else?

4 A I think that's all I know.

5 Q Is that it?

6 A I don't know, there may be more details, but --

7 Q I do.

8 A -- suggest to it.

9 Q I do. I need to know today whether there's anything
10 else that you believe Mr. Brass did that caused Vitol injury
11 at any time.

12 A Yes. Whatever money we spent in providing him product
13 and the ability to market it and deliver it, that he
14 (indiscernible) pay for us -- pay to us, he did not pay.

15 Q Okay. What else?

16 A Losses incurred from hedges that he asked to be put on
17 to hedge his -- the product that was in inventory.

18 Q Now, were those his hedges or Vitol's hedges?

19 A No, they were -- Vitol was hedging the product. He
20 took the risk on the -- on the value of the product and he
21 was hedging that through Vitol. We put on the hedges and he
22 would get the result.

23 Q In whose name?

24 A Positive or negative.

25 Q He was entitled to 100 percent of the profits or liable

1 for 100 percent of the losses on those hedges; is that what
2 you're saying?

3 A I don't recall how it was --

4 Q I thought you just said you did. Now you don't
5 remember?

6 A I don't know how it was split. I mean, that was put on
7 behalf for him, so --

8 Q Okay, so it was split. There was some agreement to
9 split up those profit.

10 A I -- no. I believe that it was all his. I don't know
11 --

12 Q Well, you just that you thought they were split. You
13 weren't sure how they were split.

14 A I don't know if it's 100 and zero, could be a split, or
15 it could be -- I just know that basically Vitol was hedging
16 for him.

17 Q Really? How many placed in his name?

18 A I don't know the details of that.

19 Q How many hedges were placed in GCAC's name?

20 A I don't know details --

21 Q How many hedges were placed in Vitol's name?

22 A I don't know (indiscernible). All that can be provided
23 you by Vitol.

24 Q You told me in 2018 you went back to figure this out.
25 So were their hedges placed in Mr. Brass' name? Any?

1 A I don't know how they did the hedging. I know there
2 was -- I was told that it was about \$5 million worth of
3 hedging losses.

4 Q Whose losses, though? Vitol was the trader, right?

5 A I was told the agreement was that they were done on his
6 behalf and he would cover them.

7 Q Now you were in business together. You were doing the
8 hedges, but he was also liable for some of the losses?

9 A No. Is --

10 Q Well, how --

11 A The risk was solely his on the product, and if he chose
12 to hedge it, he could hedge it. We provided hedging but he
13 would have to cover the losses or the gains, he would take
14 get the (indiscernible), but --

15 Q Okay. I'm trying to sort this out because what you're
16 describing is that he's entitled to all the profits of the
17 hedges. Is that true or not true?

18 A I believe so. I don't know.

19 Q How do you not know if -- hold on. Was there an
20 agreement to share? Could there have been an agreement to
21 share these profits?

22 A I don't know.

23 Q Possible, right?

24 A Possible.

25 Q And an agreement to share the losses, right?

1 A Possible. I don't know that.

2 Q Who --

3 A Eric would know that.

4 Q Would Eric be allowed to trade in Vitol's name without
5 your permission?

6 A Yes. He does that every day.

7 Q Right.

8 A Previous to that.

9 Q Every day, right? And so these trades in Vitol's name,
10 Vitol was at risk. Isn't that correct?

11 A When Vitol's transacts, yeah, Vitol's at risk.

12 Q That's right. So explain to the Court and explain to
13 me how -- and we'll show, we're going to look at these
14 trades, they're in Vitol's name. How do you get all the way
15 to Mr. Brass if they're in your name?

16 A If the transaction is done, we're in agreement where
17 we're doing it on behalf of them.

18 Q And where is that agreement? Now we're getting
19 somewhere. Where is that agreement?

20 A In our business, a lot of the agreements are just
21 verbal.

22 Q Right.

23 A It's done in the actions. Like --

24 Q Right. It's let's look at how we're acting. It's not
25 necessarily in writing, right?

1 A No, it's -- basically it's understood that basically
2 when you have an agreement, it's, in our business is your
3 word is your bond. Now if your word is not worth much, then
4 you have security behind it. In this case we have security
5 but Eric made a mistake --

6 Q Okay.

7 A -- trying to transact without that security.

8 Q You wandered off a little bit on me. My question is,
9 where is that agreement?

10 A I don't know.

11 Q You said, these trades were on behalf of someone. That
12 would be in writing, wouldn't it?

13 A It may be in the emails.

14 Q I'm not asking you to guess.

15 A I don't know.

16 Q You were the CEO.

17 A No, the CEO doesn't get involved to that detail. At
18 least I didn't.

19 Q Okay. But you've been involved in litigation with Mr.
20 Brass for how many years? Five? You haven't looked for
21 this yet?

22 A I've been retired for two years.

23 Q Okay, three. So you sued him for three years. Where
24 is it?

25 A Whatever evidence, whatever detail we have, Vitol has.

1 Q Okay.

2 A They have --

3 Q So --

4 A -- providing to you, I'm sure.

5 Q So if we don't have it, it doesn't exist. Is that your
6 testimony?

7 A If Vitol tells you it doesn't exist, it doesn't exist.

8 Q No, I didn't ask you if they said it doesn't exist. If
9 we don't have it, it's your testimony it doesn't exist.

10 Right?

11 A It's my testimony I don't know if there is documents or
12 not. I hate to speculate what that --

13 Q Well, you sit up here and you've sued a man for three
14 years based upon your allegation --

15 MR. AURZADA: Objection, Your Honor. That's not a
16 question.

17 THE COURT: I agree. Why don't you ask it again?

18 BY MR. PATTERSON:

19 Q If you don't even know if Mr. Brass is liable for the
20 trading losses, what's the basis of your lawsuit for the
21 past five years?

22 A He himself admitted the losses and he wanted to pay me
23 for the losses. He asked for terms to the losses. He
24 himself admitted those losses there. It was an agreement
25 between Eric and AJ, an agreement that was functioning from

1 August onwards for a period of time until --

2 Q Right. There was a deal made in August, wasn't there?

3 What you just said, there was a deal made between Mr. Kuo

4 and Mr. Brass in August of 2017, wasn't there?

5 A No. In August --

6 Q That's what you just said. You just said there was an
7 agreement among those two since August of 2017. Is that not
8 true?

9 MR. AURZADA: Argumentative, Your Honor.

10 THE WITNESS: That's not what I said.

11 THE COURT: No, overruled.

12 BY MR. PATTERSON:

13 A I said on August of '17, he was informed that we would
14 only provide financing support until the end of the year.

15 Q So the financing didn't start until August now, right?

16 A No. It was going on before then.

17 Q You just said in August that was the agreement you were
18 referring to.

19 A No, in August, he was notified that it wasn't going to
20 be any further financial support at the end of -- this by
21 the end of December.

22 THE COURT: Mr. Patterson, I don't want to
23 interrupt you. We've got to stop at six, just so I can --

24 MR. PATTERSON: Well --

25 THE COURT: I just wanted to give you that little

1 bit of -- just so you can plan accordingly. We can talk
2 about tomorrow and all that stuff.

3 MR. PATTERSON: No, I will do my best to stop a
4 little bit before six.

5 BY MR. PATTERSON:

6 Q All right, so Mr. Loya, try this a different way. You
7 believe that Mr. Brass owes Vitol money for any number of
8 hedges, one or more?

9 A Yes.

10 Q All right. How many?

11 A I don't know the number.

12 Q And how do you come to that conclusion? What led you
13 to that conclusion?

14 A I was told by Eric the number of hedges over the period
15 of time that he had done for AJ.

16 Q Okay.

17 A -- his instructions.

18 Q And what else?

19 A And the agreement was he would cover them.

20 Q All right. What else?

21 A (indiscernible).

22 Q Well, you told me about your stroll through the trading
23 floor in March of 2018, Mr. Loya. Remember that?

24 A Yes.

25 Q And you heard Mr. Kuo on the phone --

1 MR. AURZADA: Objection. Asked and answered.

2 THE COURT: Overruled.

3 BY MR. PATTERSON:

4 Q And you remember what you said you did when you found
5 out what the conversation was?

6 A I said yes.

7 Q What did you do?

8 A Like I said, I asked him why are you talking to AJ when
9 we're not supposed to be --

10 Q After that, what did you do? What did you tell me you
11 did after that?

12 A I asked him to figure out how much money he owed us.

13 Q Didn't you say you went back to your office and you
14 started figuring it out?

15 A I didn't figure it out.

16 Q Okay.

17 A I asked him to provide me the details.

18 Q Did he?

19 A Started to, yes.

20 Q Started to. Did he finish?

21 A No, it took time to get everything together and have
22 accounting check it.

23 Q Did he give you the detail in toto?

24 A Yes.

25 Q All right. How many hedges, approximately, did Mr.

1 Brass owe Vitol for?

2 A I don't recall the number.

3 Q Okay. More than one?

4 A Yes.

5 Q More than six?

6 A I have no idea.

7 Q Right.

8 A Don't recall.

9 Q How many of those trades were done in Mr. Brass' name?

10 A Are we talking about the hedges again or are we now
11 talking about trades?

12 Q Hedges.

13 A I don't know. I believe all of them were done for
14 mister --

15 Q That's not what I asked you.

16 A They were all done --

17 Q I know that's your allegation, right, and you have no
18 paperwork and you have no writings, but that's what you want
19 everyone to believe and we're trying to figure it out. How
20 many were done in his name?

21 A I don't know.

22 Q Any. Were there any done in his name?

23 A I don't know. I don't think so. They were all done
24 probably in Vitol's name.

25 Q That's right. Now let's talk about the trades. Your

1 allegation is that Mr. Brass and GCAC owes Vitol money for
2 trades. Is that true or false?

3 A He owes Vitol money for product released to him, sold
4 to him.

5 Q That's two different things. Two different things.

6 You understand that, right? Released to him and sold to him
7 are two different things. You understand that, don't you?

8 A Yes.

9 Q Okay.

10 A One --

11 Q Which was it?

12 A -- and you release it. Both. First you sell it. We
13 control the tankage. Vitol controlled the tankage. Then
14 Vitol releases it for him to be able to take it. He can't
15 take it unless Vitol releases it.

16 Q That's right.

17 A Vitol sells it and then instructs the terminal to
18 release it.

19 Q And you did that.

20 A I believe we did, yes.

21 Q Okay. What did Mr. Brass do wrong in that transaction?

22 A He didn't pay for it.

23 Q You didn't sell it to him, did you?

24 A It was sold to him.

25 Q No, it wasn't. It was sold to a third party, wasn't

1 it? Mr. Loya. You know that, right?

2 A No, I don't know that. I don't know --

3 Q You do. How much oil -- how much product did GCAC or
4 Mr. Brass buy from Vitol over the course of your
5 relationship, ever?

6 A I don't know that. I don't know that number.

7 Q Any?

8 A I don't know that number.

9 Q You just said -- no, I said any.

10 A No, I'm sure -- yes, of course.

11 Q You say that like you know, but you don't remember
12 anything.

13 A We've been transacting with him for many years.

14 Q I understand. Isn't it true that he went out and found
15 buyers and due to your relationship to the prior Rio deal,
16 the transactions were generally three-part or four-part in
17 order to satisfy your obligations to Rio? Isn't that true?

18 MR. AURZADA: Objection, Your Honor. That's a
19 compound question.

20 THE COURT: Sustained.

21 BY MR. PATTERSON:

22 Q How much product did you actually sell to Mr. Brass or
23 GCAC, Mr. Loya?

24 A I believe it's \$10 million worth.

25 Q Really? \$10 million? That's your sworn testimony

1 today?

2 A That's my belief.

3 Q No, I want to know what you know, because I'm going to
4 write it down. You think it's \$10 million?

5 A Yes.

6 Q All right. He bought \$10 million dollars of product.

7 What kind? I'm going to put it right up here at the top.

8 What kind of product?

9 A It would be either fuel oil or asphalt.

10 Q Fuel oil or asphalt. And this was purchased by whom?

11 Mr. Brass?

12 A It was sold to AJ, yes.

13 Q To Mr. Brass. So it was purchased by Mr. Brass and he
14 didn't pay for it, right?

15 A That's my belief.

16 Q I'm not asking you what you believe. I'm asking you
17 what you know.

18 A I don't know --

19 Q Are you guessing?

20 A Yes.

21 Q You're guessing. So that's -- this is just a guess to
22 support this five years of litigation?

23 A No, I'm not -- Vitol is litigating.

24 Q But you were --

25 A I was there. And when it was presented to me, it was -

1 - that was what I recall.

2 Q Why are you really continuing the litigation with Mr.
3 Brass? Tell me the motivation, why.

4 A It's rare when we not get paid for product and I think
5 that we owe it to our shareholders to pursue Debtors or
6 people, and -- vigorously. I think it's part of the job of
7 management and I think that AJ probably took funds and
8 stashed them away in different places and -- in order to
9 simply defraud Vitol. That's why.

10 Q That's your belief?

11 A That's my belief.

12 Q And you believe that's why the litigation continues
13 today?

14 A I think that the litigation continues because he's been
15 two-faced at either providing data, providing information.
16 He's doctored information. He's behaved in a very dishonest
17 way. So I think that we -- this could have been resolved
18 much earlier had we had a somewhat honest counterparty.

19 Q So shareholders are all high level executives, right?

20 A No --

21 Q We talked about that.

22 A We talked about that. I corrected you. No.

23 Q Employees or past employees?

24 A Yes.

25 Q Right. You said it was high level executive

1 compensation, right? Preferred stock. Isn't that what you
2 told the Court?

3 A No. You asked me if I -- no, I didn't say that. You
4 asked me if I own shares that have preferred stock right
5 now.

6 Q All right. Who obtained preferred stock from Vitol
7 Holdings?

8 A One has to be a shareholder, a common shareholder
9 first. Once one stops being a shareholder, his common
10 shares become preferred stock.

11 Q How do you become a shareholder?

12 A You are rewarded by management and for various reasons,
13 whether it's profitability or coming up with a great idea,
14 dedication, solving a problem, solving a bad business,
15 whatever, is a way for management to compensate long term
16 individuals.

17 Q Everyone's available to get that?

18 A No. The board of Vitol decides who gets that.

19 Q Is everyone available? It's available to secretaries?

20 A It used to be. Not anymore.

21 Q It is available to traders?

22 A Yes.

23 Q Okay. So that's your shareholders, right.

24 A I'm sorry?

25 Q You don't think your shareholders were interested in §3

1 million to settle this?

2 A I think that shareholders will look at any offer now
3 that it's up to them to decide what's acceptable. Although
4 frankly, I think any offer by AJ is highly suspect.

5 Q That's the real answer, isn't it? You're not
6 interested in settling with GCAC or Mr. Brass, are you?

7 A I would have loved to settle with him, but I --

8 Q Really? What would it take? Tell the Court. What
9 would it take?

10 A It's now up to Vitol. I'm not -- no longer there. I
11 can't --

12 Q When you were there.

13 A -- decide.

14 Q What was -- what would've been?

15 MR. AURZADA: Objection. Outside the scope of
16 direct and not relevant.

17 THE COURT: Sustained.

18 BY MR. PATTERSON:

19 Q So Mr. Loya, when you approved, Vitol approved the,
20 what you're referring to as financing arrangement, what was
21 the interest rate?

22 A If I recall correctly, I think my answer was I don't
23 approve financing. I don't get involved in approving
24 financing arrangements.

25 Q So there was no financing?

1 A I didn't say that. I said it wasn't involved.

2 Q Somebody approved it.

3 A (indiscernible).

4 Q Okay. What does Vitol charge for financing? What
5 would be the term?

6 A Vitol doesn't enter into terms like that. Vitol will
7 do financing when it sees a profit opportunity, whether it
8 enhances our -- enhances Vitol's ability to trade in the
9 market, whether ability to do bigger trades, learn about the
10 market, and usually there's little or no or minimal interest
11 rate. It's not entering into these deals to make an
12 interest rate. It's entering into a deal to acquire market
13 penetration or to enhance its trading abilities.

14 Q Going to put on the screen for you, Mr. Loya, a
15 document.

16 MR. PATTERSON: And for the Court, it's 104-25.
17 Again, probably I'm going to offer it based upon the filings
18 made by counsel.

19 THE COURT: I'll give counsel an opportunity
20 review. Let me know.

21 MR. AURZADA: Based upon the offer, it lacks
22 foundation.

23 BY MR. PATTERSON:

24 Q You recognize this document? Let me scroll through
25 because you would be the guy that -- to approve a joint

1 venture, right?

2 A Yes.

3 Q Right? This doesn't ring a bell?

4 A No.

5 Q Keep scrolling. None of this? Doesn't jog your
6 memory? You don't remember this?

7 A I would have to read it. I mean the way you're
8 scanning it, I have no idea.

9 Q Well, I don't want you reading it until we figure out
10 what it is, if you can tell me.

11 A I don't recognize it.

12 Q Let me finish. Long document. Kind of glance through
13 it. See if it jogs your memory, you remember this? Nothing
14 still?

15 A No.

16 Q All right. We'll come back to that. All right. I'm
17 going to put on screen for you, try it one more time. This
18 is 104-9.

19 MR. PATTERSON: I'll go ahead and offer it again.
20 We'll see where that goes.

21 MR. AURZADA: No objection, Your Honor.

22 THE COURT: Okay, 104-9 is admitted.

23 (Defendant's Exhibit 104-9 entered into evidence)

24 BY MR. PATTERSON:

25 Q Okay, Mr. Loya, on the screen is an email. 104-9 is

1 the exhibit. And you'll see down at the bottom May the 3rd,
2 2017. This is an email we looked at a little bit earlier as
3 a standalone document. Do you remember that?

4 A Yes.

5 Q Where Mr. Kuo emails you and Mr. Bake. "Hey, this is
6 an old deal, but the Sargeant acquisition caused us to table
7 it. Let's talk about it again." Right?

8 A Okay.

9 Q And here, we have the response to this and Chris Bake,
10 who -- this is the guy over in the UK you is in charge
11 worldwide of asphalt and he's the one that shut this deal
12 down -- the discussions, I'm sorry. Right? Did I get that
13 right?

14 A Yes.

15 Q All right. And so July 31st, this is several months
16 after the original email, right. "Thank you both for your
17 time this morning." You both, being, I assume Mr. Kuo and
18 Mr. Barth?

19 A I assume so.

20 Q Mr. Loya?

21 A Yes.

22 Q Is that who?

23 A Reading what -- yes --

24 Q Okay, let me just take a break and let you read instead
25 of trying to do both.

1 A Okay. Yes, he's talking to Eric and Steve.

2 Q Now, are you aware of any other responses to the May
3 3rd, 2017 email that we looked at earlier?

4 A I don't remember. I wouldn't know. I wouldn't recall.
5 I don't know.

6 Q Well, you might recall. I'm asking you if you do.

7 A I don't.

8 Q Okay. As far as you know, this is the only response
9 from the May 3rd, 2017 email, right?

10 A I don't know that. I just --

11 Q I said as far as you know, this is the only response.
12 So you either know of other responses or you don't.

13 A I don't know. Let's put it that way. I don't know of
14 other responses.

15 Q Okay. So as far as you know, this is the only
16 response, right?

17 A (indiscernible) response.

18 Q I'm sorry?

19 A Okay.

20 Q Not okay. I'm asking you to testify under oath here
21 today.

22 A And that's what I'm doing. As far as I know right now
23 --

24 Q This is --

25 A -- right now, this is the only response I've seen.

1 Q Thank you. It's the only one you know of, right?

2 A It's the only one I've seen. I don't know of --

3 Q And I asked you, if it's the only one you know of.

4 A I don't know of any others.

5 Q Okay.

6 A This time.

7 Q My question's yes or no. Is this the only one you know
8 of? Yes or no?

9 A At this point, yes.

10 Q "Thank you both for your time this a.m." And this is
11 Mr. Bake who you say is in charge of asphalt worldwide for
12 Vitol. "As agreed, we're trying to cajole Dan into a
13 discussion with AJ." Who's Dan?

14 A That must be Dan Sargeant.

15 Q All right. He is the VALT man in the UK, right?

16 A He's a Sargeant guy. I don't know what his role was in
17 VALT, but he was involved in VALT.

18 Q Well, why would he be in this email if he wasn't
19 involved in asphalt?

20 A No, he's the asphalt guy. I didn't say -- I didn't
21 know what his role was in VALT. I don't know if he was the
22 guy in VALT.

23 Q All right. "Trying to cajole Dan into a discussion
24 with AJ and find a way forward." Right? This is July 31,
25 right? Looking at your timeline, this is about the time

1 that Mr. Bake tells you to stop, right?

2 A July/August, so yeah.

3 Q All right. Mr. Bake says, we're trying to find a way
4 forward, aside from having one face to the market as far as
5 bitumen. Is that how you say it?

6 A Bitumen.

7 Q Bitumen?

8 A Yeah.

9 Q What is that?

10 A Asphalt.

11 Q Okay, "selling goes, we have to cross a few other
12 bridges, like competing with the likes of Valero on rack
13 sales, which precludes us from buying bulk from them for
14 Central America, et cetera. I think that all possible, but
15 there will need to be parameters agreed. I really regret
16 that when I received your heads up below, Eric, on the
17 proposition below, that I did not go back and discuss more
18 proactively with you the extent of the Vitol involvement on
19 the asphalt side. Anyway, we are where we are and we need
20 to try and find a way to make this work." Did I read that
21 correctly?

22 A Yes.

23 Q All right. And you're CC-ed on this email, right?

24 A Yes.

25 Q Well, he's not saying stop the discussion, is he?

1 A No.

2 Q July. What is he talking about? The joint venture
3 discussions?

4 A It sounds like there is a -- some issue or problem with
5 --

6 Q With what? That's what I'm trying to figure out. The
7 joint venture?

8 A It doesn't say joint venture. It just said, basically
9 it's having a asphalt business and having a asphalt business
10 if the way -- asphalt business be involved versus an asphalt
11 business the way GCAC wants to conduct.

12 Q Right. Talking about a way for asphalt business with
13 AJ, right, Mr. Brass?

14 A No, it -- yes. Sounds like --

15 Q Right?

16 A if we do something with AJ, it's going to cause
17 problems with Valero.

18 Q No, that's not what it says. Where does it say that?
19 Where does it say it's going to cause problems?

20 A I'm reading between the lines, but there -- "few other
21 bridges," obviously problems, "like competing with the likes
22 of Valero on rack sales" means you're competing with them in
23 their home territory and "preclude us from buying bulk from
24 then for Central America." They may not sell to us in
25 Central America, which is very important. So --

1 Q Okay.

2 A He's saying there's an issue here that if --

3 Q I --

4 A -- see --

5 Q "I think that all possible, but there will need to be
6 parameters agreed." Doesn't sound like big problems to me,
7 right?

8 A That's --

9 Q And you're talking about getting into business with AJ,
10 right? That's a JV.

11 A -- said it's possible.

12 Q Right?

13 A Possible.

14 Q Right? I agree with you. But that's what they're
15 talking about, right?

16 A "I think all possible." I don't know if they're
17 talking about AJ, a JV, or some other arrangement.

18 Q I understand. You --

19 A -- possible.

20 Q Of course not. Where is financing in this email?

21 A not in there.

22 Q Anywhere, right?

23 A No.

24 Q It's not even mentioned, is it?

25 A Bake is not involved in financing.

1 Q Right. So why talk to him, if all you're doing
2 financing? You said your financing from the beginning, why
3 have this email discussion, right?

4 A (indiscernible).

5 Q Would only be for JV, right?

6 THE COURT: Got to let him answer the question.

7 MR. PATTERSON: I'm sorry.

8 BY MR. PATTERSON:

9 A It would be -- it would be that Chris and Eric are
10 talking about how does the business -- how to do business
11 with GCAC.

12 Q Right.

13 A Part of that involves joint venture, but we're guessing
14 that.

15 Q Right. No, we're not, because you just said they would
16 never discuss financing on this email, right?

17 MR. AURZADA: Objection. Argumentative.

18 THE COURT: Overruled.

19 BY MR. PATTERSON:

20 Q Right?

21 A No -- yes, right.

22 Q That's correct, so it wouldn't be financing, so what
23 else could it be?

24 A Doing business somehow together.

25 Q There you go. So let's move on. Steve Barth, which is

1 a business guy of yours, right, or was, when you were there,
2 right? Same day, to Mr. Kuo. "Had a brief chat with Chris,
3 after our conference call." Who would be Chris? Chris
4 Bake?

5 A Yes.

6 Q All right. Had a brief call -- after our conference
7 call. "His note below is indicative of where he is at this
8 point. Wants resolution and fortunately has basically
9 taking the responsibility for the situation." What does
10 that mean?

11 A Barth is optimistic. It's ridiculous.

12 Q Why do you say -- you need to explain what you're
13 talking about.

14 A You want me to explain?

15 Q Yes. Of course.

16 A I think Barth's saying, I just talked to Chris and you
17 see the note below, he's -- everything is possible and he's
18 going to take responsibility to a situation.

19 Q What does that mean?

20 A I think that's a very optimistic view that somehow
21 Chris is going to solve the whole thing.

22 Q Solve what thing? What are you talking about?

23 A How to do business with GCAC.

24 Q Right. The joint venture, right?

25 A Or other ways to do business. It doesn't specify just

1 the joint venture. He made be talking about something else.

2 Q What could it be? It's not financing. We know that.

3 Right? We know that. You said that. What else could it

4 be?

5 A It wouldn't be financing. It would be --

6 Q Right.

7 A It'll be whether we -- you limit yourself to this kind
8 of arrangement and you market this in a market over here,
9 whatever. It may be somehow --

10 Q Joint venture of some kind, right"

11 A Some arrangement.

12 Q Some arrangement.

13 A -- arrangement.

14 Q Some commercial business arrangement, right, other than
15 financing. Right?

16 A Yes.

17 Q All right. Now Mr. Kuo responds again on the same day,
18 later in the day. "That's what I gathered from his email.

19 Hopefully we can find an amicable solution for all parties.

20 Hard to imagine we can't." Solution from what? What are we
21 trying to find a solution for?

22 A Obviously, problems regarding the -- doing business
23 with GCAC. He, Chris, alluded to one of them.

24 Q And then help me. Help me figure this out then. Was
25 there a problem with the financing?

1 A Not that I know of. No.

2 Q What's the problem?

3 A Again, Chris alludes to it. If you do the business,
4 rack business, we may lose Valero's supplier to Central
5 America.

6 Q Is that what he says?

7 A That's exactly what he says.

8 Q "Aside from having one face to the market as far as
9 asphalt selling goes" -- he's talking about Sargeant or
10 VALT, right? Doesn't want to have VALT and another deal out
11 there in the market. Right? Vitol needs to have one face.

12 Right?

13 A "Aside from having one face to the market" -- yes.

14 That's one problem. We have to have -- do something.

15 Having two face is a problem.

16 Q Right.

17 THE COURT: Mr. Patterson, we've got a few minutes
18 left. I don't want you to get too much into it if you got -
19 -

20 MR. PATTERSON: I didn't see the time.

21 THE COURT: Does it make sense to --

22 MR. PATTERSON: Okay. Yes. One second, please.
23 Just a couple things to follow up and we'll wrap
24 up and get out of here, Judge.

25 THE COURT: No worries.

1 MR. PATTERSON: I won't try to get to another
2 exhibit.

3 BY MR. PATTERSON:

4 Q Now, on July 31st, the exhibit we just looked at, July
5 31st, 2017, were you doing transactions -- you being Vitol -
6 - doing transactions with GCAC and/or Mr. Brass at that
7 time?

8 A I believe so, yes.

9 Q And were they profit transactions? So splitting
10 profit, splitting losses?

11 A I don't know what arrangements were.

12 Q But there were some arrangements.

13 A I'm sure that Eric and him had an agreement or what
14 they were doing.

15 Q And you're going to rely on what Eric said, Mr. Kuo
16 says?

17 A Yes. I mean, he was the one doing it.

18 MR. PATTERSON: All right. No further questions
19 for now. I'm not finished.

20 THE COURT: Understand, for purposes of today.

21 MR. PATTERSON: No, I'll pick up when we start
22 back.

23 THE COURT: Okay. No worries. Mr. Loya, sounds
24 like you're going to join us tomorrow. I would remind you
25 that you're still under oath and you're not to discuss your

1 testimony with anyone today or period. Why don't we start
2 tomorrow at -- I've got a nine o'clock. I don't know how
3 long it'll go, but I want to give it due respect, give
4 everyone opportunity.

5 Everyone can leave everything here just the way it
6 is. That's not going to be a problem. Why don't we start
7 at 10:30 then go for maybe two hours, 10:30 to 12:30, and
8 then take a lunch break and then we'll just go late in the
9 day and we'll see where we end up. And then -- I want you
10 to, you know, write down the dates that we were talking
11 about. If you can just give some thoughts to what we look
12 like next week, maybe when we start tomorrow. We can at
13 least, before we continue with your examination of the
14 witness, we can plot out next week. I just want to make
15 sure that Ms. Saldana knows to clock out certain dates just
16 in case folks -- because folks contact her over the weekend,
17 and that kind of -- okay?

18 MR. PATTERSON: Yes, sir.

19 THE COURT: Thank you.

20 MR. PATTERSON: And --

21 THE COURT: Yes.

22 MR. PATTERSON: Just make sure he understands that
23 that includes not even his own lawyers as we understand it
24 now.

25 THE COURT: Yeah. That means everyone. You're to

1 discuss with no one. Okay? Yes, and that does include your
2 lawyers. Okay?

3 THE WITNESS: Okay.

4 THE COURT: All righty, folks. Thank you very
5 much. I very much appreciate everyone's time. Thank you.

6 CLERK: All rise.

7 (Proceedings adjourned at 5:59 p.m.)

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CERTIFICATION

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3 I certify that the foregoing is a correct transcript from
4 the electronic sound recording of the proceedings in the
5 above-entitled matter.

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7 *Sonya M. Ledanski Hyde*

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10 Sonya Ledanski Hyde

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25 Date: September 15, 2022

3 ARTHUR JACOB BRASS,)
4 Debtor.) CASE NO: 21-60025-CML
5 VITOL INC.,)
6 Plaintiff,) CASE NO: 21-06006-CML
7 Vs.) ADVERSARY
8 BRASS,)
9 Defendant.) Houston, Texas
-----) Friday, September 2,
) 2022
) 10:50 a.m. - 4:40 p.m.
-----)

TRTATU

12 BEFORE THE HONORABLE CHRISTOPHER M. LOPEZ
UNITED STATES BANKRUPTCY JUDGE

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WITNESS DIRECT CROSS REDIRECT RECROSS V.D.

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MIGUEL LOYA -- 28 106 124 --

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MICHAEL WAGNER 158,167 -- -- -- 164

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1 HOUSTON, TEXAS; FRIDAY, SEPTEMBER 2, 2022; 10:50 A.M.

2 (Call to Order)

3 THE COURT: Okay. This is -- good morning,
4 everyone. This is Josh Lopez back on the record in *Vitol*
5 *v. Brass* today, September 2nd. We are starting around
6 10:50 this morning. I see counsel for Vitol, counsel for
7 Brass. I see the witness here. I'm going to ask the
8 witness to step out just for a moment. I'm going to ask
9 that you not step directly right outside the hallway.
0 Perhaps there's a bench right on the other side and
1 somebody can come grab you. I just want to talk
2 housekeeping and you probably don't need to -- have more
3 fun things to do than listen to that. Just give them a
4 second. I just want to make sure.

15 UNIDENTIFIED: I wanted to apologize for
16 (indiscernible - 10:51:24).

17 THE COURT: No. It's completely fine.

18 UNIDENTIFIED: (Indiscernible - 10:51:26).

19 THE COURT: No, no, no. Look, we did this at the
20 last second. And I think I've been flexible with Vitol,
21 and both parties whenever anybody's needed a break or some
22 time to kind of think about stuff. So I -- completely
23 fine. That's not an issue at all. So -- I did tell the
24 parties, I had another hearing where somebody came up to me
25 and asked me if -- they told me that they had to have a

1 hearing in front of Judge Jones, and I jokingly told a
2 younger lawyer, you know, you tell Jones that, you know, at
3 some point I'm going to have to take over and supersede
4 this thing, and he actually told the judge in the middle of
5 a hearing. Jones sent a message back, telling me that when
6 I have more grey hair than he does then I'm allowed to get
7 it done.

8 So I apologize. No one needs to hear bad jokes
9 in the morning. Can we just talk housekeeping in terms of
10 kind of what we're going to accomplish today, potential
11 days that folks may need to come back. And then I'd also
12 like to communicate something -- maybe I'll start with
13 that. It was a witness who was informed was in the
14 hospital.

15 MR. COOLEY: Yes, Your Honor. And in fact, we
16 had at least some update --

17 THE COURT: Okay.

18 MR. COOLEY: -- or at least some more information
19 (indiscernible - 10:52:47).

20 THE COURT: No. I would -- I just -- I want to
21 get on the record that my case manager called the number
22 and a female answered the phone, I can't tell young, old,
23 but said that at least as of yesterday afternoon, he was
24 still in the hospital and that's all I -- that's all that I
25 had.

1 And so I'm just communicating that. I don't know
2 who it was, but maybe you've got additional information. I
3 just wanted to communicate that because that was something
4 that my chambers did.

5 MR. COOLEY: A little bit, Your Honor. We
6 received an email from Mr. Boston -- or from what I
7 understand to be Mr. Boston's email address yesterday
8 afternoon. I have copies of it because I -- it -- he
9 describes his actual medical situation. It does appear to
10 be not insignificant. For HIPAA reasons, I don't want to
11 just read it into the record. I'm happy to hand a copy to
12 parties. But the short version is it does appear that he
13 has -- they have found a medical condition of some
14 significant. He says they are determining what the next
15 steps are. I do not know how long I will be here. I
16 believe he's referring to the hospital.

17 He mentions that the court called to remind him
18 he is still under subpoena and asked, let me know where we
19 go from here. We responded, and it's in the thread, to
20 just say I'm sorry to hear that. Thank you for the update.
21 We will inform the Court and let you know. I'm happy to
22 hand --

23 THE COURT: No, no, no. That's --

24 MR. COOLEY: -- a copy to anyone --

25 THE COURT: That's consistent with what I -- what

1 we heard, and I'm glad that it was communicated that we
2 reached out. I just -- I didn't want to sit on the
3 information that we had actually heard from someone.

4 In terms of what we accomplish today or in the
5 next few days, how do you -- what's your -- how do you
6 envision?

7 MR. COOLEY: Your Honor, what I think we see from
8 here, and this will depend a little bit on --

9 THE COURT: Actually, before we begin, I know the
10 rule is invoked. Are we all clear in terms of who can be
11 here or not?

12 MR. COOLEY: Yes, Your Honor.

13 THE COURT: Okay.

14 MR. COOLEY: So far as I can tell.

15 THE COURT: Okay. Thank you.

16 MR. COOLEY: Subject to sort of how much longer
17 the cross of Mr. Loya will be going, and counsel may be --
18 may have an estimate of that. They may have a sense, but
19 we'll take that up. As far as sequencing, we'll see how
20 far we get. We will obviously begin by continuing with and
21 completing Mr. Loya. Mr. Wagner is here again today from
22 EEPB. We've put him in a room out in the hallway somewhere
23 to get some work done.

24 We will then recall him to continue and complete
25 his testimony relating to some business records. We would

1 then -- we sort of re-shuffled a little bit, given that
2 we're now to the Friday of a holiday weekend and people's
3 schedules get a little tricky, and we would then propose to
4 call Mr. Murray, the Chapter 7 Trustee. I think at least
5 from our perspective, his testimony -- his direct
6 examination is relatively brief. Cross-examination will be
7 what it is. And then, just from a sequencing perspective,
8 if we still have daylight left and have not yet worn out
9 our welcome with the Court this afternoon, we would next
10 proceed to take up the matter of Mr. Tomashevsky's
11 (phonetic) deposition, which as the Court knows, we intent
12 to provide by deposition excerpt.

13 We have a couple of different ways we can do
14 that, and if we get that far, we can take that up in
15 whatever manner the Court prefers.

16 THE COURT: Okay. So after Tomashevsky, then
17 what other witnesses do you anticipate calling?

18 MR. COOLEY: Then after Mr. Tomashevsky, and I'm
19 quite certain we won't get past that today -- or quite
20 confident, I should say. After that would be Mr. Kuo, Eric
21 Kuo from Vitol. We then would plan to call Mr. Brass, the
22 Defendant, who we've delivered a trial subpoena, and he's
23 on the witness list and so forth.

24 And then finally, I believe our last witness
25 would then be Mr. Dietz, the expert witness, at which point

1 I think that would complete things from our end. That is
2 the expectation right now.

3 The Mr. Boston issues lingers --

4 THE COURT: I got it.

5 MR. COOLEY: -- insofar as we haven't really
6 figured that out yet, but that's still out there, but we're
7 obviously very aware of what seems to be --

8 THE COURT: From a --

9 MR. COOLEY: -- a meaningful situation here.

10 THE COURT: I just call it from a direct
11 examination standpoint, Kuo, Brass, Dietz, how much time do
12 you think -- court time do you think you're going to need?

13 MR. COOLEY: Your Honor, I think Mr. Kuo's direct
14 examination is less than an hour. Mr. Brass's examination
15 -- two to three hours for Mr. Brass on direct. And Mr.
16 Dietz is also, I think, in the two-to-three-hour range on
17 direct.

18 THE COURT: Okay. Are there any other witnesses?
19 I just want to make sure -- I'm going to repeat to you what
20 I understand.

21 MR. COOLEY: Yes, Your Honor.

22 THE COURT: We'll finish with Mr. Loya. Put Mr.
23 Wagner back on, Mr. Murray. We'll take up Tomashevsky --
24 yeah, what we'll call the depo portion, Mr. Kuo --

25 MR. COOLEY: Yes, Your Honor.

1 THE COURT: -- Brass, Dietz.

2 MR. COOLEY: Correct, Your Honor.

3 THE COURT: Okay. Okay. Are there -- I realize
4 I gave you some days that we were -- I was available next
5 week. Any of them work better than others, and obviously
6 I'm going to turn to Mr. Patterson and Ms. Goott to ask as
7 well.

8 MR. COOLEY: Right, Your Honor. We have some
9 scheduling conflicts on Wednesday, I know.

10 THE COURT: Okay.

11 MR. COOLEY: I think our hope was to ask the
12 Court -- the real sensitivity we have is by and large,
13 people are local. We're in Dallas, but that's pretty
14 close. Mr. Dietz, however, the expert, is travelling back
15 and forth from New York, which makes it a little more
16 complicated from just a timing and planning perspective,
17 getting back and forth.

18 Our hope was to see if the Court might have,
19 whether it was a two-day block or a three-day block,
20 perhaps on a Monday, Tuesday of one of the upcoming weeks.
21 Not this first week, we have a Wednesday conflict, but
22 where we could get everybody together in sort of a one and
23 done session, rather than having -- trying to get Mr. Dietz
24 to go back and forth, which is just going to get very
25 difficult for his schedule. And given how this trial has

1 run so far, it's hard to predict --

2 THE COURT: Yeah. Let me just take a look --

3 MR. COOLEY: -- timing.

4 THE COURT: I'm looking at the mornings --

5 Tuesday mornings are bad for me, but I free up at 1 o'clock
6 in the afternoon. But in terms of next Monday, I have a
7 Chapter 13 panel, and that I can't move. In other words, I
8 guess if we were going to do like a Monday/Tuesday, it
9 would have to be probably the 19th and the 20th -- 19th --
10 I could probably do that. Maybe fit in a hearing, if I had
11 to. I don't think it's going to be terribly complicated to
12 do that one hearing. Ms. Aldania (phonetic) will correct
13 me if I'm wrong. Let's see. And then maybe the 20th in
14 the afternoon. That I could probably do.

15 If that works for you. If not, then the

16 Wednesday/Fridays are probably better for me.

17 MR. COOLEY: I know that the --

18 THE COURT: I will tell you as well, I apologize,
19 the 22nd and the 23rd, I am out of the state. So -- and I
20 get back on -- I fly -- I'm going to do my Chapter 13 panel
21 in another city on the 26th, and then I come back on the
22 27th. So the 12th and the 26th, I've got Chapter 13 panels
23 in the morning, and then those Tuesdays, I teach in the
24 morning. I probably added more confusion than you probably
25 wanted.

1 MR. COOLEY: More information is always a good
2 thing, Your Honor.

3 THE COURT: That depends on what the information
4 is.

5 MR. COOLEY: Fair enough. And from our
6 perspective, at least, we thought that might work most
7 effectively.

8 THE COURT: So nothing next week? I'll leave it
9 up to you. I just want to hear from you all. Couldn't we
10 do Kuo or Brass or something next week, or if we -- at all?
11 And fit Dietz in -- or get someone in next week?

12 MR. COOLEY: I could double check Mr. Kuo's
13 schedule, Your Honor, but I think we could probably fit him
14 in next week, subject to what his cross will be --

15 THE COURT: Yeah.

16 MR. COOLEY: -- you know, it may be lengthy. We
17 might be able to do that.

18 THE COURT: I mean, but I can -- I mean, like in
19 other words, next Wednesday, you can have -- depending on
20 what your schedule is, or we can do Brass next Wednesday.
21 We can just fit him in, get one of them in all day. And I
22 can give you the whole day. We can start at 9 o'clock, and
23 just go until we're done. On one of them.

24 MR. COOLEY: Yes, Your Honor.

25 THE COURT: I just -- what I don't want to do is

1 just -- because now we're starting to go to the 19th, and
2 that means we're going to start to spill into October, and
3 that's going to get tricky for me, and I want this trial
4 done in September.

5 MR. COOLEY: And we're cognizant of that fact,
6 Your Honor.

7 THE COURT: I know everybody else is, so I'm not
8 -- I know -- I'm sure I'm speaking for everybody else.
9 Just -- I think it just makes sense to get it all done.

10 MR. COOLEY: Your Honor, we'll find a way to make
11 Wednesday work of next week.

12 THE COURT: Okay. But just give plenty of heads
13 up. I don't need to know who the next witness is, but if
14 it's going to be Brass or Kuo, then obviously they need to
15 know.

16 Let's work hard then today to see if we can do
17 Loya, Wagner, Murray, Tomashevsky. If we can accomplish
18 that today, maybe we can work towards that and then figure
19 out where we go next week, maybe Wednesday of next week,
20 and then we can talk about additional days.

21 MS. GOOTT: Yeah. If we could just get in as
22 soon as the Court is available. End of September is tricky
23 with Jewish holidays, and so --

24 THE COURT: No, no. And so I'm incredibly
25 sensitive to that.

1 MS. GOOTT: Yeah. So if -- I appreciate they're
2 from Dallas, but Vitol chose to hire Dallas lawyers for --

3 THE COURT: No, I mean -- look, I'm completely
4 sensitive.

5 MS. GOOTT: Yeah. Thank you.

6 THE COURT: My -- just say I -- let's just find
7 the days that work. And at least -- and even if we're just
8 fitting in one day, but if Dietz had a firm date, then
9 Dietz could get a flight and come in. I think that's what
10 we're trying to figure out, especially for Dietz. Dietz
11 can't come in and get stuck, because you know -- and have
12 to stay here for two days and have to try to go out. We
13 just need to give Dietz a date, whether it's the 19th, and
14 just pick it, and just say Dietz is the 19th, or for other
15 witnesses.

16 MR. PATTERSON: Hold on. (Indiscernible -
17 11:04:07).

18 THE COURT: No, I know that. What I'm saying,
19 Mr. Patterson, but it's easier, I think, on his schedule if
20 we just picked a date and said, you know, on the 19th,
21 that's his date. And if we can -- if we need to go out of
22 order or something, I don't mind doing that.

23 MR. PATTERSON: (Indiscernible - 11:04:23).

24 THE COURT: We can -- if it's Kuo or Brass, then
25 let's just pick -- it may be easier to just do that then

1 and pick days.

2 MR. COOLEY: And we can try that -- we can try to
3 do that as well, and I can check --

4 THE COURT: The way I'm looking at this, at least
5 in terms of your case in chief is we probably have, in
6 addition to today, two full days -- two -- two and a half
7 full days of -- right, because if -- we're probably looking
8 at two, two and a half full days from there, and maybe we
9 just pick those days, and then you can kind of go from
10 there.

11 MR. COOLEY: I think that's right. And that's
12 what we were hoping. And again --

13 THE COURT: No. I got what you were doing. And
14 maybe the 19th and the 20th are good days to complete
15 everything, but maybe we can fit someone in next week, and
16 just so we know the 19th or the 20th, because I then fly
17 out the 22nd, and then I want to make sure that we get
18 whatever it is.

19 And, Ms. Goott, I ought to ask you, in terms of -
20 - do you -- in addition to these individuals, do you
21 anticipate calling any other witness? Putting aside
22 rebuttal and all that stuff.

23 MS. GOOTT: So, I mean, I don't -- obviously, I'm
24 not -- we're going to see what they even accomplish in
25 direct. We may not even have to go --

1 THE COURT: Okay.

2 MS. GOOTT: -- depending on what they do.

3 THE COURT: Okay. No, no. That's what I'm just
4 saying.

5 MS. GOOTT: And I also just want to make it very
6 clear when we're talking about scheduling of witnesses,
7 that nobody mistakes my agreement for scheduling that I
8 don't have an objection to that witness being called.

9 THE COURT: Completely understand.

10 MS. GOOTT: Okay.

11 THE COURT: I think that's just the day that -- I
12 view scheduling as that's the day that we know the witness
13 will be --

14 MS. GOOTT: Okay.

15 THE COURT -- in town and in the courtroom,
16 subject to whatever objections and anybody's rights. I
17 appreciate the clarification.

18 MS. GOOTT: Right. I just don't want you to say,
19 well, Ms. Goott, we were talking about this witness, and
20 you agreed to this date. Why didn't you tell me that you
21 objected to their testimony? That's all.

22 THE COURT: That makes sense to me.

23 MS. GOOTT: I just --

24 THE COURT: So hypothetical example, there's an
25 objection to Mr. Cooley, then Brass should be around. Or

1 the next witness should be there so if one's there, we can
2 slip in and not lose the day. That's completely
3 understand.

4 MS. GOOTT: Thank you. I just don't want to
5 waive it.

6 THE COURT: Okay. Yeah. But I will say, to the
7 extent that you -- there is any objection that you think
8 would be helpful for me to have a heads up on, I'll take
9 it, at the appropriate time. But obviously, everybody's
10 rights are reserved.

11 MR. PATTERSON: (Indiscernible - 11:07:00).

12 THE COURT: No, no, no. I don't want to take
13 them up now. I just -- but if there's something that you
14 want to -- maybe at the end of the day because I know these
15 -- you'll -- well, these will get taken up no matter what
16 today, and we'll deal with them. But for the future, maybe
17 today you could -- I don't want you to reveal something you
18 don't want to. But if there's something you want me
19 thinking about as other folks come up, like you kind of
20 gave me a heads up on the (indiscernible - 11:07:26) issue
21 and that kind of stuff, it might be helpful for me to just
22 think about it over the weekend.

23 MR. PATTERSON: (Indiscernible - 11:07:35) unless
24 you want (indiscernible - 11:07:40).

25 THE COURT: Okay. Got it.

1 MR. PATTERSON: (Indiscernible - 11:07:54).

2 THE COURT: That kind of -- okay. Got you.

3 Okay. No, no, no, but that -- the flavor is what I was
4 looking for. That's perfect. Thank you.

5 Okay. So do you think by the end of the -- I
6 don't want to go into the weekend. I think by the end of
7 the day today you can kind of tell me what -- whether next
8 Wednesday would work for one party, and who that might be
9 so we can all think about it, subject to everyone's
10 objections.

11 MR. PATTERSON: (Indiscernible - 11:08:27).

12 THE COURT: Okay. Any other housekeeping we need
13 to think about today or this morning?

14 MR. PATTERSON: (Indiscernible - 11:08:33).

15 THE COURT: Okay. I did give a lot of thought
16 last night, and early this morning to one issue and I
17 wanted to at least put something on the record for all
18 parties to kind of, at least understand they way I think
19 about the issue. And I looked at -- I was up here late and
20 then early this morning thinking about it, because I think
21 the case, especially as we break for the holiday and we
22 start thinking about other days that -- scheduling issues,
23 and arguments of the parties.

24 I was asked to consider whether the
25 attorney/client privilege applied to former employees. A

1 1981 decision of (indiscernible - 11:09:30) is the seminal
2 case, the foundational case of an attorney/client privilege
3 in the organizational realm. I'm going to cite *Upjohn v.*
4 *United States*, 449 U.S. 383 (1981). I'm going to read a
5 number of cases into the record.

6 I would also note that my courtroom deputy is
7 recording this hearing and you'll have it tonight. In
8 *Upjohn*, Upjohn's general counsel sent out a questionnaire
9 to certain employees to determine the nature of potentially
10 improper payments to foreign officials. That's at 386 --
11 449 U.S. 386. Issued a summons requesting the production
12 of such questionnaires. Ms. Upjohn refused, claiming the
13 attorney/client privilege.

14 The Supreme Court agreed with Upjohn, finding
15 that communications made by employees to counsel concerning
16 matters within the scope of the employee's corporate duties
17 were protected by the attorney/client privilege. That's at
18 page 394.

19 In reaching its conclusion, the Court stated that
20 the privilege exists to protect not only the giving of
21 professional advice to those who can act on it, but also
22 the giving of information to the lawyer to enable him to
23 give sound and informed advice. That's at 390.

24 As for corporations, the Court noted that there
25 will often be employees beyond the control group who "will

1 possess the information needed by the corporation's
2 lawyers." That's at 392. Thus, the Court reasoned that
3 the extension of the privilege beyond the controlling
4 officers, which was the control group there and not just
5 regular employees was necessary to preserve a corporate
6 attorney's ability to gather the information necessary to
7 represent the corporation, and to allow communications
8 between an employee and counsel.

9 The Supreme Court expressly declined to consider
10 -- or to decide, I should say, whether the privilege
11 extended to former employees because the issue was not
12 properly before the Supreme Court. And if you look at
13 Footnote 3, the Court cites that the District Court and the
14 Court of Appeals did not address the issue. So the Supreme
15 Court didn't decide that issue.

16 Chief Justice Berger, however, wrote a concurring
17 opinion and this is what he said. "In my view, the Court
18 should make clear now that as a general rule, a
19 communication is privileged, as least when as here, an
20 employee or former employee speaks at a direction of
21 management with an attorney regarding conduct or proposed
22 conduct within the scope of employment. The attorney must
23 be the one authorized by the management to inquire into the
24 subject, and must be seeking information to assist counsel
25 in performing the following functions: evaluating whether

1 the employee's conduct has bound or would bind the
2 corporation; assessing the legal consequences of any of
3 that conduct; or formulating appropriate legal responses to
4 action that have or may have been taken by others with
5 regard to conduct." That's at 403. Chief Justice Berger
6 concurring.

7 Since *Upjohn* was decided, two circuit courts have
8 addressed the issue as to former employees. Both the Ninth
9 and Fourth Circuit Courts of Appeal have adopted Justice
10 Berger's reasoning and extended the privilege to former
11 employees. *In re Allen*, 106. F.4th 582, pen cite 606,
12 Fourth Circuit, 1997; *United States v. Chen*, 99 F.3d 1495,
13 1502 pen cite, Ninth Circuit, 1996.

14 Also note that in 1999, the District Court for
15 Connecticut in *Paralta v. Sandant Corp* (phonetic)
16 considered whether discussions held between a company's
17 former employee and a lawyer in preparation for the former
18 employee's deposition had a discrimination suit filed by
19 Paralta were privileged. The cite on that is 190 FRD 38,
20 District of Connecticut, 1999.

21 The Court concluded that any privileged
22 information the former employee obtained while employed by
23 Sundant, including any information conveyed by counsel
24 during that time, remained privileged, even after she left
25 the company.

1 The Court also reasoned that the distinction
2 drawn by the Court between attorney/client privileged and
3 non-privileged communication with former employees should
4 not be difficult to apply if the essential point is kept in
5 the (indiscernible - 11:14:14) communication relate to the
6 former employee's conduct and knowledge, or communication
7 with Defendant's counsel during his or her employment. If
8 so, such communication is protected from disclosure by the
9 Defendant's attorney/client privilege under *Upjohn*.

10 In *Fisher v. Holoberton* (phonetic), which is the
11 unreported decision in this district on this issue, Judge
12 (indiscernible - 11:14:42) considered whether the
13 attorney/client privilege applied to a former employee,
14 that's cited in matters 2009 Westlaw 483890 as the
15 (indiscernible - 11:14:54) February 5th, 2009.

16 Like *Paralta*, *Fisher* also involved whether
17 communications between the Defendant's former supervisor
18 and Defendant's counsel in preparation for the supervisor's
19 deposition were privileged. The *Fisher* court was persuaded
20 by the Fourth Circuit's reasoning in *In re: Allen*, which
21 found that because former employees could possess
22 information needed by the corporation's lawyers and agreed
23 with adopted Justice Berger's reasoning, *Fisher* held --
24 this is Judge Grey-Miller talking, and I quote, "All
25 communications between the former employee and Defendant's

1 counsel are protected by -- are protected provided they
2 relate to events concerning the former employee's duties
3 while employed by the Defendants."

4 The District Court also held, however, that
5 questions about which documents the supervisor reviewed in
6 preparation for the deposition were not by itself
7 considered work product. The Court held (indiscernible -
8 11:16:03) every compilation of documents reviewed by a
9 witness before testifying at trial or at deposition, with a
10 work product privilege protection, would all put rewrite
11 Rule 612 of the Federal Rules of Evidence out of existence.

12 Therefore, without an independent privilege
13 attached to the documents, the identity of the documents
14 the supervisor reviewed in preparation were not privileged,
15 but the conversations between the former employee and his
16 counsel about those documents was privileged.

17 So I agree with Judge Grey's analysis and
18 reasoning in *Fisher*, and I adopt it in this case. Official
19 decision aligns what the two appellate circuit courts that
20 have addressed this issue, and it also aligns with Justice
21 Berger's concurrence in *Upjohn*.

22 I'd also note that virtually every federal court
23 outside of this district has joined *Fisher* -- has joined
24 the reasoning in *Fisher*, I should say, in extending the
25 *Upjohn* doctrine to former employees. I would cite *Export*

1 *Import Bank of the United States v. Asia Pulp and Paper*
2 *Co.*, 232 FRD 103, Southern District of New York, 2005 case.
3 And the quote is, "Virtually all courts hold that
4 communications between company counsel and former company
5 employees are privileged, that they concern information
6 obtained during the course of employment." There's a 2008
7 Westlaw 11380016, District of Utah, June 12th, 2008 case,
8 *Misner v. Potter* (phonetic). It states, "Under *Upjohn* and
9 its progeny, the attorney/client privilege applies to
10 confidential communications concerning matters within the
11 scope of the employee's corporate duties, whether or not
12 they're currently employed." *Jacobs v. Aron*, 2020 Westlaw
13 3064435, Eastern District of Michigan, June 6th, 2020 case.
14 Same result.

15 So as it applies -- and again, I'm taking these
16 up one on one from what I've heard so far based on the
17 direct, the questions that were -- Mr. Loya has been
18 testifying about matters that were -- occurred within the
19 scope of his employment. To the extent there are
20 communications in preparation for trial today that relate
21 to discussions about the scope in connection advice seeking
22 and discussions in the prep meeting in preparation for
23 testimony today about matters that occurred within the
24 scope of his employment, or while he was employed, the
25 attorney/client privilege will extend -- I think Judge

1 Grey-Miller's analysis is reasonable. I think it's also
2 fair game to ask what documents he reviewed in preparation
3 for that.

4 I think parties understand that that's not
5 protected, but maybe communications about what they -- what
6 was said about those documents would be, again, that just
7 applies to Loya, but you know at least the way I'm thinking
8 about this, what I believe the district court is doing in
9 this district, and federal courts are doing throughout the
10 country, the two circuit courts, every witness will be
11 taken up on his own, depending on what the question is, but
12 there is my legal reasoning. I've laid it out there.

13 I did not want the witness to be in here,
14 listening to any of that. I thought it would have been
15 inappropriate. Everybody's rights are reserved on this
16 issue, one way or the other. No one should read this as
17 anything -- as something beyond what the question that was
18 asked to me about Loya.

19 So everybody can reserve their rights about that.
20 And I think I can listen to, when I read the cases, I'm
21 happy for someone to tell me I'm wrong about the reasoning
22 there. But I think I owed Mr. Patterson an answer to his
23 question, and not just a blanket ruling that will -- I've
24 tried to give it a well-reasoned, laid out reason, based on
25 case law about the answer to that specific question while

1 Mr. Loya was here.

2 So anyway, everybody's rights are reserved. With
3 that said, Ms. Goott, any comments about that?

4 MS. GOOTT: One last thing.

5 THE COURT: Yes, absolutely.

6 MS. GOOTT: One more question about that. Thank
7 you, Judge. Just in response to your prior comment, is
8 there anything we want you to think about.

9 THE COURT: Uh-huh.

10 MS. GOOTT: And I just -- if we get to the point
11 where they close, I just want to let the Court know that
12 depending on what is or isn't elicited, that I will be
13 making an oral motion under Rule 52, asking the Court to
14 issue a judgment if they haven't met their burden.

15 THE COURT: I think that's entirely appropriate.

16 Thank you.

17 Okay. Mr. Aurzada, unless you have anything --
18 or Mr. Cooley, anything to say, I think we can bring the
19 witness in and get him back on.

20 MR. AURZADA: Yes, Your Honor.

21 THE COURT: Okay. Starting with Mr. Patterson's
22 cross.

23 Mr. Patterson, I'm just going to turn over the
24 podium to you.

25 MR. PATTERSON: Thank you, Your Honor.

1 THE COURT: And then you can use it at your --

2 Mr. Loya, why don't you come on up.

3 Before we begin, there's a binder up there. I

4 don't know if it's a layover from something yesterday or if
5 we should remove it.

6 MR. LOYA: It's been there since I was --

7 THE COURT: Huh?

8 MR. LOYA: It was there all afternoon --

9 THE COURT: Yeah. I just want to make sure.

10 Thank you. Okay. Mr. Loya, I would remind you that you
11 are still under oath, and we were going to continue with
12 the cross-examination. Okay?

13 MR. LOYA: Okay.

14 THE COURT: Folks, let's -- depending on where
15 this is going, maybe we try to -- I want to finish Loya,
16 and we'll go until we're done with Loya, and then we'll
17 break for lunch. I think it would be a good time to do it
18 there.

19 So I know I said yesterday 12:30, Mr. Patterson,
20 and for other parties, but if we -- if there's a window to
21 get this done, then let's shoot to get there. But take
22 your time. That's not to rush you. It's just to tell you
23 I don't want you -- let's see if we can finish.

24 MR. PATTERSON: Not a problem, Judge. And I
25 don't mind working through lunch, but I don't want to

1 inconvenience anyone else.

2 THE COURT: Let's go.

3 MIGUEL LOYA, WITNESS, PREVIOUSLY SWORN

4 CROSS-EXAMINATION

5 BY MR. PATTERSON:

6 Q. Good morning, Mr. Loya, I want to -- before we get
7 started, I want to recap just a couple of points that I
8 think you made yesterday, and I want to verify that with
9 you this morning. We talked about this relationship that
10 Vitol says that they had with GCAC and Mr. Brass; do you
11 recall that?

12 A. Not specifically, no.

13 Q. Okay. It was just yesterday. You don't remember? Do
14 you remember me and you talking yesterday, like all
15 afternoon?

16 A. I remember that. Yes.

17 Q. Okay. Do you have a recollection of the content of
18 our discussion from yesterday?

19 A. Yes.

20 Q. Okay. And do you recall the content -- one of the
21 pieces of content that me and you discussed was Vitol and
22 GCAC and Vitol and Mr. Brass having some type of
23 relationship?

24 A. No.

25 Q. You don't remember that?

1 A. No.

2 Q. Okay.

3 THE COURT: Mr. Loya, can I ask you just to speak
4 a little bit louder and make sure that the record is
5 picking you up.

6 BY MR. PATTERSON:

7 Q. Are you on any medication today, Mr. Loya?

8 A. No.

9 Q. Are you on any illegal substance today?

10 A. No.

11 Q. I'm going to ask you again, do you have an issue with
12 memory or recall that would impair your ability to provide
13 this Court information?

14 A. No.

15 Q. All right. But you seem to have trouble remembering
16 yesterday.

17 A. I don't think so.

18 Q. Well, we had a long -- hour's long discussion
19 yesterday about Vitol. Let me ask you this, do you know
20 who Mr. Brass is?

21 A. Yes.

22 Q. Do you recognize GCAC as an entity at all?

23 A. Yes.

24 Q. All right. So do you recall me asking you questions
25 yesterday when you were here about Vitol and Mr. Brass?

1 A. Yes. Many.

2 Q. All right. Now you remember. And do you remember me
3 asking you questions about Vitol and GCAC yesterday?

4 A. Yes.

5 Q. Okay. So it's coming back to you?

6 A. No.

7 Q. No, it's not coming back to you?

8 A. No, it was always there. It didn't go anywhere.

9 There's nowhere to come back from.

10 Q. Okay. Because I asked you if you remembered, and you
11 said no.

12 A. No. I just did -- need to be more specific. What
13 relationship?

14 Q. Was there not a relationship at all?

15 A. It was a client that -- a commercial relationship.

16 Q. Commercial relationship. Okay. So you left here last
17 night. What did you do knowing you're going to come back
18 today to talk? Did you do anything in preparation?

19 A. No.

20 Q. And we talked about your preparation for your first
21 day here. Do you remember that?

22 A. Yes.

23 Q. All right. Do you remember you told me you met with
24 these gentlemen over here, like Wednesday of last week?

25 A. Yes.

1 Q. All right. Now, did you go to their office?

2 A. Wednesday of last week?

3 Q. Yes, sir.

4 A. I went to the Vitol office.

5 Q. And they came to Vitol's office to meet you.

6 A. Yes.

7 Q. All right. And who all was in that meeting?

8 A. The gentleman at the table and VJ.

9 Q. And you.

10 A. And me.

11 Q. Anyone else?

12 A. No.

13 Q. And the meeting was because you were going to come
14 testify, right?

15 A. Yes.

16 Q. Now, they told you -- did they give you anything to
17 look at?

18 A. They showed me a couple of documents where my name was
19 in a couple of emails.

20 Q. A couple of emails. Do you remember which ones?

21 A. I think one was a presentation that -- not a
22 presentation but Eric was alluding to a plan to get into
23 business with GCAC, and they were dated 2015.

24 Q. Did we look at that email yesterday?

25 A. I don't remember seeing it. No.

1 Q. Did they give you a copy to take with you?

2 A. No.

3 Q. They kept it.

4 A. Yes.

5 Q. But tell me what the content of that document was?

6 What do you recall from the document that you reviewed in
7 preparation for your testimony?

8 A. I just read it, but he said -- Eric said we're
9 thinking about a -- doing business with GCAC, and I think
10 he said here's the presentation also. I did not review any
11 presentation.

12 Q. Okay. What kind of business?

13 A. If I recall correctly, he just said business.

14 Q. He didn't say joint venture?

15 A. No, he did not say that.

16 Q. Didn't say financing?

17 A. No.

18 Q. Didn't say loan agreement?

19 A. No.

20 Q. What was the date again, your recollection?

21 A. Sometime in 2015.

22 Q. 2015. And the presentation was like a PowerPoint
23 presentation?

24 A. I don't recall. The presentation was not attached to
25 the --

1 Q. It wasn't attached.

2 A. No.

3 Q. Did they show it to you separately?

4 A. No.

5 Q. Right. What else did you look at?

6 A. I can't recall exactly. I just remember another
7 document, another email with my name -- with me copied in
8 it. I don't remember the specifics of it.

9 Q. Well, you read it, didn't you?

10 A. Yeah. I scanned it.

11 Q. Your lawyer gives you an email in preparation for your
12 testimony, and you only scanned it?

13 A. Well, I scanned it -- I read it quickly and said it's
14 big documents like these that weren't --

15 Q. And I'm sorry, I didn't understand what you --

16 A. We didn't discuss it. We didn't discuss the document.

17 Q. All right. I'm not asking you what you discussed.

18 I'm asking you what you read. What was the date of this
19 email?

20 A. Sometime in 2017.

21 Q. All right. And who else was on the email?

22 A. I don't recall.

23 Q. What was the content?

24 A. I don't recall.

25 Q. It was last week. Wednesday, in preparation for your

1 testimony. How is it you don't remember?

2 A. I don't remember.

3 Q. Okay. What else?

4 A. We discussed what --

5 Q. No. Hold on. Don't --

6 MR. AURZADA: Objection. You really shouldn't
7 talk about what he discussed.

8 MR. PATTERSON: All right. I haven't asked him
9 what he discussed. So please don't mention, unless the
10 judge up here tells you, do not tell me what was said.
11 Okay? Please? Would you do that for me, Mr. Loya? I just
12 want to talk about documents. Things they put in front of
13 your first, okay? We have that agreement? Okay.

14 BY MR. PATTERSON:

15 Q. So a 2015 email that had a presentation that wasn't
16 attached to it, right, from Mr. Kuo, and you were on the
17 email, right?

18 A. Yes.

19 Q. Right. But it didn't have the presentation attached
20 is what you I believe testified to, right?

21 A. Correct.

22 Q. And then a 2017 email that you scanned. And what was
23 the topic?

24 A. I don't recall. I'm sure it was GCAC, but I don't
25 recall the text.

1 Q. All right. So it was a GCAC email, but you -- that's
2 about all you remember from it?

3 A. Yes.

4 Q. All right. Okay. What else?

5 A. We discussed things.

6 Q. I don't want to know discussed, I want to know
7 documents that were put in front of you.

8 A. I don't recall any other document.

9 Q. Just two emails, that's it?

10 A. Yes.

11 Q. All right. Did they put any agreements in front of
12 you?

13 A. No.

14 Q. Did they put anything up on the screen for you to look
15 at, like we're doing -- like we did yesterday?

16 A. The two emails were on the screen. Not on a --

17 Q. Not on hard copy. What else did they put on the
18 screen for you? Document-wise?

19 A. Nothing.

20 Q. Nothing? Just two emails in preparation for your
21 testimony?

22 A. Yes.

23 Q. All right. Did they send you anything before or after
24 that meeting via email or other electronic transmission?

25 A. No.

1 Q. Did they tell you -- I'm sorry. Did you
2 independently, before or after that meeting, review any
3 documents?

4 A. No.

5 Q. So in preparation for your testimony, these lawyers
6 gave you two emails, and that's your sworn testimony, and
7 that's it?

8 A. As far as documents? Yes.

9 Q. Okay. And tell me which -- when I say documents, what
10 do you understand that to mean?

11 A. Two emails.

12 Q. I understand. Did you read anything else in
13 preparation for your testimony?

14 A. No.

15 Q. Either before your meeting with the lawyers, during
16 the meeting with your lawyers, or after the meeting with
17 your lawyers --

18 A. No.

19 Q. -- did you read anything else?

20 A. The only thing I read was an email from VJ telling me
21 when to be here in Court.

22 Q. All right. Did it have any instructions on your
23 testimony?

24 A. None.

25 Q. All right. Did you receive any text messages from any

1 of these lawyers or VJ regarding your testimony?

2 A. None.

3 Q. No emails other than the one -- when to be here?

4 A. Yes.

5 Q. All right. Did they give you a copy of these two
6 emails?

7 A. No.

8 Q. All right.

9 MR. PATTERSON: Your Honor, I would ask for
10 production of these two emails from the lawyers. We're
11 entitled to those.

12 MR. AURZADA: We'll get them. It's going to take
13 me a minute, but we'll get them. I mean, we have a team
14 here, Judge.

15 THE COURT: You're saying it's not going to do it
16 right now, but you'll get it done?

17 MR. AURZADA: Yeah. I mean, I will ask Ms. Robin
18 to begin the process of trying to find those emails.

19 THE COURT: Okay. Thank you.

20 MR. PATTERSON: And if you'll just have them
21 email them to me would be the quickest, or Ms. Goott, if
22 you have her email.

23 THE COURT: Just not me.

24 MR. PATTERSON: Just not the judge.

25 BY MR. PATTERSON:

1 Q. Did you go talk to Mr. Kuo about this -- this trial?

2 A. No.

3 Q. Did you talk to him on the phone?

4 A. What period of time are we talking about?

5 Q. Well, let's start in the month of August of 2022.

6 A. No.

7 Q. July of 2022.

8 A. No.

9 Q. This year?

10 A. No.

11 Q. All right. And did you have an independent meeting
12 with Vitol's in-house counsel that didn't involve these
13 gentlemen?

14 A. No.

15 Q. In preparation for today. So how long was this
16 meeting at Vitol with your lawyers? How long -- timespan
17 did it last?

18 A. 15, 20 minutes.

19 Q. That's it?

20 A. Yeah.

21 Q. And you left right after the meeting, or you hung
22 around?

23 A. I hung around.

24 Q. All right. And who -- the lawyers left, right?

25 A. I don't know where they went.

1 Q. Well, right. I mean, you left the meeting.

2 A. Yes.

3 Q. And what did you do? Did you mingle? Did you go see
4 some old people? What?

5 A. Yeah. I went and talked to some of my colleagues --
6 ex-colleagues.

7 Q. Who'd you go talk to?

8 A. I talked to Ben Marshall mostly.

9 Q. Ben Marshall?

10 A. Yeah.

11 Q. What does Mr. Marshall do?

12 A. He's the current CEO.

13 MR. AURZADA: Object to the relevance of this.

14 Unless it has to do with this hearing, who he talked to
15 doesn't really matter.

16 MR. PATTERSON: Okay. That's --

17 MR. AURZADA: We talked about this hearing --

18 THE COURT: No. Hold on a second. Hold on a
19 second. Is this a relevance objection?

20 MR. PATTERSON: It's a relevance, and that's a
21 side bar, and again attempt to coach --

22 THE COURT: That's why I'm stopping it.

23 MR. PATTERSON: -- this witness, Judge.

24 THE COURT: So --

25 MR. PATTERSON: It's frustrating.

1 THE COURT: I don't know if it's relevant or not.

2 MR. PATTERSON: Right.

3 THE COURT: Because we don't know who the
4 individual is. So overruled.

5 MR. PATTERSON: Thank you, Your Honor.

6 BY MR. PATTERSON:

7 Q. What did you and Mr. Marshall talk about?

8 A. We talked about where the company is, different
9 investments of the company, catching up on the Board
10 members.

11 Q. Anything else?

12 A. General conversation.

13 Q. Any other topic?

14 A. How I've been doing. How well Vitol's doing.

15 Q. How long had it been since you'd seen Mr. Marshall?

16 A. Maybe a couple of months.

17 Q. How long had it been since he saw you walking the
18 halls of Vitol?

19 A. Over two years.

20 Q. A long time, right? So when he saw you, didn't he
21 say, Mike, what are you doing here?

22 A. No.

23 Q. He didn't? After two years, and you show up at his
24 office?

25 A. No. That wasn't what happened.

1 Q. Did you call him ahead of time and say, hey, I'm going
2 to be in the building, I'm going to come by and see you?

3 A. No. He stopped by and said, when you're done, come by
4 the office.

5 Q. All right. And he never said why are you here?

6 A. No. He seemed to know.

7 Q. He didn't say, why are you talking to my lawyers?

8 A. No.

9 MR. AURZADA: Asked and answered, Your Honor.

10 And now I do re-urge the relevance objection.

11 THE COURT: I think there is a relevance
12 objection. Mr. Patterson, what's the relevance?

13 MR. PATTERSON: Well, I think I'm entitled to
14 find out if he discussed his testimony or the facts with
15 someone other than his lawyers. And I think it's
16 reasonable to suggest that he wasn't there for two years,
17 and sees an old friend, and the friend doesn't say, what
18 are you doing here? There's something there that I think
19 that I'm entitled to try to elicit.

20 THE COURT: I just want you to get there.

21 MR. PATTERSON: I'm trying, Judge. I'm not very
22 effective sometimes, but I'm trying.

23 THE COURT: I'll sustain the objection.

24 BY MR. PATTERSON:

25 Q. Did you discuss this litigation with anyone other than

1 your lawyers while you were in that building?

2 A. No.

3 Q. You didn't discuss GCAC or Mr. Brass with anyone in
4 that building?

5 A. I -- on the way out, I said hello to Eric Kuo, ran
6 into him, said hi, I'm here for this. (Indiscernible -
7 11:40:11). That's it.

8 Q. I'm sorry, what was -- what was your comment in the
9 end?

10 A. That I just made a comment that this was a pain in the
11 ass. And he said agreed, and that was it.

12 Q. That was it? You hadn't talked to Mr. Kuo all year,
13 and it was a passing, this is a pain in the ass?

14 A. We purposely -- at least, I don't know, I did not want
15 to talk to him about this case at all.

16 Q. Well, how did he know why you were there? How did he
17 know what you were referencing when you said this is a pain
18 in the ass?

19 A. Because he probably guessed why I was there. I mean,
20 I --

21 Q. No. Now you're guessing.

22 A. I don't know. Easy assumption.

23 Q. You just said this is a pain in the ass, and you
24 hadn't talked to him in a year?

25 A. Or longer.

1 Q. Or longer. And you pass him in the hall and you make
2 one comment, and that's it?

3 MR. AURZADA: Objection, Your Honor. He's
4 already testified to this.

5 THE COURT: Sustained.

6 BY MR. PATTERSON:

7 Q. Do you think you might have a memory problem with that
8 also?

9 A. No.

10 Q. But I guess this is my problem, I just asked if you
11 recalled when's the last time you saw Mr. Kuo, and what was
12 your answer? Do you remember that? Remember, I said let's
13 start with this month, with August, right, remember that?
14 And you said no. And I said how about two months, and you
15 said no. And then I said, how about 2020 -- do you
16 remember that exchange?

17 A. Yes, I remember that exchange.

18 Q. And what was your answer?

19 A. No, I hadn't seen him.

20 Q. Okay. But now you just said you saw him last week.

21 A. You refreshed my memory when -- I was just -- it was -
22 -

23 Q. Okay.

24 A. -- a passing hello.

25 Q. No. You saw him and you talked to him, right?

1 A. Yes.

2 Q. Okay. You swore you hadn't in over a year, and now
3 you're telling me it was last week. So I want you to stop
4 and think, please. Try to remember what you talked about
5 with Mr. Kuo when you saw him last week.

6 A. It wasn't longer than a few seconds. And I said
7 hello, this is a pain in the ass. Yeah, it's a pain in the
8 ass. That was it. I don't remember anything else.

9 Q. I know you don't remember. You didn't remember even
10 seeing him. That's why I asked you to take a minute
11 because you're testifying under oath, Mr. Loya.

12 A. And I'm telling you what I know.

13 Q. I don't need you to try to figure out what I want to
14 know. I need you to answer truthfully and fully. Do you
15 understand that?

16 A. Yes. And I'm answering --

17 Q. Okay.

18 A. -- what I know, not what you know or -- what I know.

19 Q. All right. Because you know I'm going to ask him the
20 same thing. He's going to sit right there, and I'm going
21 to ask him.

22 A. That's fine.

23 Q. Okay. So again, when's the last time you saw Mr. Kuo
24 --

25 MR. AURZADA: Asked --

1 BY MR. PATTERSON:

2 Q. -- before -- can I ask my question please?

3 MR. AURZADA: My apologies.

4 BY MR. PATTERSON:

5 Q. -- before last week?

6 A. I don't remember seeing him for a long, long time. I
7 don't remember the last time I had met him before then.

8 Q. All right.

9 A. It would have been a long time.

10 Q. When's the last time you talked to Mr. Kuo since last
11 week?

12 A. I don't remember talking to him any time.

13 Q. When's the last time you communicated with him,
14 electronically or otherwise, since last week?

15 A. I don't recall communicating in any way with him since
16 I left the company.

17 Q. You don't remember or you're pretty sure it hasn't
18 happened?

19 A. I don't remember talking to him.

20 Q. All right. While you were walking the halls, who else
21 did you talk to?

22 A. I wasn't walking the halls. It was on the trading
23 floor. There are no halls there.

24 Q. While you were in the building at Vitol, no matter
25 where you were, who else did you talk to?

1 MR. AURZADA: Objection, Your Honor, relevance
2 and asked and answered. And I'm not going to get the
3 relevance --

4 THE COURT: I'm going to sustain. I'm going to
5 sustain the objection. I think you can ask the question in
6 a different way, Mr. -- getting to the point.

7 BY MR. PATTERSON:

8 Q. So you remember coming for the first day of trial, and
9 everyone was lined up outside?

10 A. The first day of trial? Yesterday?

11 Q. No, Tuesday.

12 A. I wasn't here Tuesday.

13 Q. When was the first day you were here?

14 A. Yesterday.

15 Q. All right. Did you sit out in the hall at all?

16 A. No.

17 Q. You sat in here?

18 A. I met VJ when I came out of the elevator. I briefly
19 went into the side room. I came here.

20 Q. You went into the side room, I guess that you figured
21 out who had testified and who was coming up?

22 A. No. I just asked how long it would take and --

23 Q. No. Don't tell me what he did say. I haven't asked
24 that. Please. Just to be safe. Not yet. But you haven't
25 seen Mr. Kuo down here at any time?

1 A. No.

2 Q. Down here in this building.

3 A. No.

4 Q. In the hallway or someplace else?

5 A. No.

6 Q. All right. Where are we on the documents?

7 MR. AURZADA: Your Honor, I believe we have them.

8 I need to look at them, but I think we have them.

9 THE COURT: All right. Let's keep going.

10 MR. PATTERSON: All right.

11 BY MR. PATTERSON:

12 Q. So yesterday -- let's go back before we got
13 sidetracked here, Mr. Kuo -- I'm sorry, Mr. Loya. Back to
14 my original question. Do you recall yesterday us talking
15 about Vitol's relationship, whatever that may be, with GCAC
16 and Mr. Brass? Is it all coming back to you now?

17 A. I understand. I remember what I said.

18 Q. Okay. And we talked about -- do you remember we
19 talked about Vitol's transaction with Vault, right? Right?

20 A. We talked about Vitol's relationship with Vault.

21 Q. Transaction, relationship, whatever you want to --
22 what do you want to call it? How would you describe it?

23 A. Relationship. I'm not sure of the transaction with --

24 Q. Okay. And I asked you when it occurred, right? When
25 did that transaction occur?

1 A. What transaction? I mean, transaction --

2 Q. With Vault between Vitol?

3 A. Vault is a part of Vitol.

4 Q. I understand. Was it always a part, or did it happen
5 one day?

6 A. It was formed under Vitol.

7 Q. I understand. When?

8 A. I believe probably around 2015.

9 Q. I don't want you to guess. Do you know? Do you
10 remember?

11 A. No.

12 Q. You don't remember?

13 A. I don't know exactly when it was.

14 Q. It happened while you were CEO of Vitol, Inc., though,
15 right?

16 A. It had nothing to do with me or my position --

17 Q. I --

18 A. -- or my job.

19 Q. I haven't suggested, and that wasn't my question. I
20 said it happened while you were CEO of Vitol, Inc.,
21 correct?

22 A. Yes.

23 Q. See if I can help you maybe refresh your recollection.
24 One second. I'm going to ask you to look at your screen
25 and tell me if you recognize that, and if it helps you

1 remember when the transaction with Vault and Vitol
2 occurred.

3 A. By transaction, it's --

4 Q. However, you want to describe it.

5 A. Why don't we call it -- are you asking me --

6 Q. I'm asking you when it occurred.

7 A. When Vault was formed?

8 Q. Yes. When the transaction with Vault was created.

9 You said you didn't remember when, and I'm asking you to
10 look at your screen and tell me if that helps you remember
11 when it occurred.

12 A. Well, it didn't help me remember, it tells me when it
13 is.

14 Q. Okay. Now, do you have a recollection of when it
15 occurred?

16 A. No, now I know when it occurred.

17 Q. Okay. When?

18 A. Apparently sometime in February 2016.

19 Q. All right. And does it help you recall what it was
20 that happened?

21 A. That he performed a business to do asphalt.

22 Q. With the world's largest asphalt company, right?

23 Remember I asked you that. The world's largest asphalt
24 company.

25 A. Okay.

1 Q. Right? Not okay.

2 A. It says so there. I don't know.

3 Q. Right? Well, I believe your suggestion was that this
4 was a small company, (indiscernible - 11:51:29) the Vault
5 was a small company based out of the UK.

6 A. I believe --

7 Q. Isn't that your testimony? Your reference that it was
8 a small company?

9 A. If I recall correctly, my point was that Vault was a
10 small company.

11 Q. Right.

12 A. Yes.

13 Q. Small as compared to Vitol, which is what \$300 billion
14 in revenue?

15 A. I don't know what it was at the time, but that varies
16 with the price of oil.

17 Q. Right? Well, for the last couple of years, what was
18 the revenue of Vitol?

19 A. I don't know. I haven't been the head the last couple
20 of years.

21 Q. You're on the Board of Vitol Group. You didn't know?

22 A. The last two years, I haven't been -- I've been
23 retired --

24 Q. The last two years, you were there. 2019 and 2020.

25 A. Those were the last two years. Probably -- it depends

1 on the price of oil.

2 Q. It's already occurred. It doesn't depend on anything.

3 It has already occurred what was approximate total revenue.

4 A. Probably around 180 million -- billion. 180 billion.

5 Q. Okay. 200 billion is that big or small?

6 A. It's a lot of money.

7 Q. A lot of money. Is that big or small?

8 A. Big.

9 Q. All right. Vault is small compared to that, right?

10 A. Yes.

11 Q. All right. 100 million versus 100 billion is a

12 significant difference, right?

13 A. Yes.

14 Q. Okay. So that's your reference when you say small.

15 Your big is 200 billion, your small is 200 million, right?

16 A. Yes.

17 Q. Okay.

18 A. We're talking about revenue as well.

19 Q. I understand. And so compare Vault to GCAC. That's
20 again much smaller, right?

21 A. Yes.

22 Q. Much smaller.

23 A. Yes.

24 Q. And so if there was a choice between Vault and GCAC,
25 Vitol's going to go with Vault, right?

1 A. I don't know that. I don't know. It's not my choice.

2 Q. Well, if you couldn't do both. What's good with that?

3 If you couldn't do both, what's Vitol going to do?

4 A. It will probably choose Vault.

5 Q. Uh-huh.

6 A. Considering it's his own company.

7 Q. That's right. And if Vault said stop what you're
8 doing with GCAC, and GCAC said stop what you're doing with
9 Vault, what's Vitol going to do?

10 A. Well, first, Vault --

11 MR. AURZADA: Asking for a hypothetical answer,
12 Your Honor.

13 THE COURT: Sustained.

14 BY MR. PATTERSON:

15 Q. In fact, Vault told you, told Vitol, stop what you're
16 doing with GCAC. Isn't that what they said?

17 A. No.

18 Q. It's not? Nick Fay (phonetic) didn't tell Mr. Bake,
19 Mr. Fay, didn't both say stop what you're doing with GCAC.
20 No more joint venture talk. Isn't that what's happened?

21 MR. AURZADA: Calls for a hearsay answer.

22 THE COURT: Mr. Patterson, what's the response?

23 MR. PATTERSON: We've already looked at the
24 email. And it's his statement. It's the basis of why he
25 talked to Mr. Kuo.

1 MR. AURZADA: I'd suggest he show him the email.

2 I think that makes it easier.

3 MR. PATTERSON: Well, I don't need his
4 suggestions. He can make an objection and ask the Court
5 rule.

6 MR. AURZADA: Then I object.

7 THE COURT: Mr. Patterson, why don't you show him
8 the email?

9 Folks, while we're doing this, I'm going to just
10 hang up the line and I'm not going to let anyone listen.
11 It's been the third day in a row where I've -- folks should
12 know to put their phone on mute. Thank you.

13 BY MR. PATTERSON:

14 Q. Do you see what I've put up on the screen for you?

15 A. I see it.

16 Q. Do you recognize it?

17 A. No.

18 Q. You don't?

19 A. No.

20 Q. Do you recognize that email at the top of the page?
21 The email address?

22 A. Which one?

23 Q. Any of them?

24 A. Eric Kuo?

25 Q. Yes.

1 A. Max Bulk (phonetic) ?

2 Q. Yes.

3 A. I recognize the names. I assume that's their email
4 address.

5 Q. All right. Is that the proper format for a Vitol
6 email address?

7 A. Yes.

8 Q. All right. Do you see down here, the very bottom
9 right-hand corner; do you recognize that?

10 A. Where it says Vitol and a bunch of numbers?

11 Q. Right.

12 A. No.

13 Q. Well, that indicates that it came from Vitol. They
14 found it and produced it. This looks like an email from
15 Vitol, right?

16 A. Yeah.

17 Q. In 2017, did Eric Kuo work for Vitol?

18 A. Yes.

19 Q. In 2017, did Max Bulk work for Vitol?

20 A. Yes.

21 MR. PATTERSON: All right. I'd offer 104-13,
22 Your Honor.

23 THE COURT: Any objection?

24 MR. AURZADA: No.

25 THE COURT: 104-13 is admitted.

1 (Defense Exhibit 104-13 admitted into evidence)

2 BY MR. PATTERSON:

3 Q. So let's go down here. And I just want to remind you
4 of what we were talking about, where I said didn't Nick Fay
5 -- didn't Mr. Bake tell you -- tell Vitol stop this
6 business with GCAC and Mr. Brass? And you said no, right?
7 Isn't that what you said?

8 A. When did I say that?

9 Q. Like two minutes ago. Is that not -- are you telling
10 me that that's not what happened? Hold on. So let's talk
11 about what happened. Why did Vitol stop? Why? Why did
12 you have the August -- July/August 2017 discussion with Mr.
13 Kuo, telling him stop the JV talk, the joint venture talk?
14 Why did that happen?

15 A. Because prior to that, Chris Bake talked to me and
16 informed me that Vault was not interested in pursuing that.

17 O. That's right. Vault told you to stop, right?

18 A. They told me that they were not interested in pursuing
19 it.

20 Q. They told you to stop, didn't they?

21 A. What they told me is they were not interested in
22 pursuing it.

23 O. Right. And to stop.

24 A. They told me they were not interested in pursuing it.

25 Q. That's right. And you had the conversation because of

1 that discussion, didn't you?

2 A. The conversation with Eric Kuo?

3 Q. Yes.

4 A. Yes.

5 Q. And you told him stop, right?

6 A. Yes.

7 Q. So what does it matter if Vault is interested or not?

8 This is a Vitol, Inc. deal. This is your deal, right?

9 Right?

10 A. No.

11 Q. I thought it was. It wasn't? Was this a Vault deal?

12 A. It was a Vitol deal.

13 Q. Vitol, Inc.

14 A. No, Vitol itself was looking at the opportunity.

15 Q. What do you mean Vitol itself? What is that?

16 A. Well, it involved Vault. It involved Vitol, Inc.

17 Q. Eric Kuo works for Vault?

18 A. The discussions -- no, he doesn't.

19 Q. He worked for you.

20 A. Yes.

21 Q. Right? Okay. So why wasn't Mr. Bake telling Mr. Kuo
22 to stop?

23 A. He wasn't.

24 Q. I know. Why? If this was a deal that Mr. Kuo was
25 doing with Vault, why wasn't Nick Fay for Mr. Bake telling

1 Mr. Kuo to stop the JV talk?

2 A. Because we were then discussing it with Inc. They
3 just decided to tell me --

4 Q. How do you --

5 A. -- the proper way to do it.

6 Q. How do you know they decided that?

7 A. Because they did it.

8 Q. Let's look at the email. All right. Let's start at
9 the bottom and work up. July 31st, 2017; do you see that?

10 A. Yes.

11 Q. Nick Fay. Who is Nick Fay?

12 A. He was the one in Vitol -- Vault, in charge of doing
13 the day-to-day business.

14 Q. All right. Let's go down and see the signature of
15 Nick Fay. It's Vault, right?

16 A. Yes.

17 Q. He works for Vault. He speaks for Vault, right?

18 A. Yes.

19 Q. Is that correct?

20 A. Yes.

21 Q. So on July the 31st, 2017, to Mr. Kuo, Mr. Barth,
22 who's your -- a business development guy --

23 A. Yes.

24 Q. -- for Vitol? Mr. Bake, we've talked about already.

25 A. Yes.

1 Q. Is UK operations guy, right?

2 A. Who is?

3 Q. Mr. Bake.

4 A. No, he's based in the UK, but he is a senior business
5 opportunity guy basically. He gets involved in a lot of
6 different things.

7 Q. Okay.

8 A. He's not involved in operations.

9 Q. I'm sorry?

10 A. He's not involved in operations. You called him an
11 operations guy. He's not involved -- he wasn't involved in
12 operations.

13 Q. What do you consider operations? Again, we're having
14 a language barrier problem, I think.

15 A. In Vitol, operations is somebody who's involved in
16 moving ships, scheduling ships, scheduling deliveries,
17 contracting inspectors basically operating the transactions
18 that are done.

19 Q. Okay. I can't pronounce the next name. Can you?

20 A. No.

21 Q. You can't? You don't know who that is?

22 A. No.

23 Q. All right. Dan Sargent (phonetic). Who's Mr.
24 Sargent?

25 A. He was a member of the Sargent family that associated

1 -- that did the business with Vault.

2 Q. All right. Mr. Finoky (phonetic), who's that?

3 A. I don't know.

4 Q. Mr. Parsons?

5 A. A -- the head of fuel oil in Europe.

6 Q. Fuel oil?

7 A. Yeah.

8 Q. Subject: GCAC Telcon. What does Telcon stand for?

9 A. Telephone conversation, I assume.

10 Q. Telephone conference or telephone conversation? So
11 can we do early Houston a.m.? So Nick writes primarily to
12 Mr. Kuo and Mr. Barth, who are both your employees, right?

13 A. Yes.

14 Q. Good morning, Eric and Steve. Were you copied on this
15 email?

16 A. No.

17 Q. Not even a blind copy? Maybe not showing up?

18 A. No.

19 Q. All right. Good morning, Eric and Steve. Again, from
20 Nick Fay, who's -- he's not -- Nick Fay is not Vitol. Nick
21 Fay is Vault, right?

22 A. No, he is Vitol.

23 Q. You just told me he's Vault. Let's look at his
24 signature. Vault, right?

25 A. But Vault is Vitol. Vault is under Vitol.

1 Q. Okay. You -- now you say that, but before, you didn't
2 even understand the transaction, right?

3 A. No, that's not right.

4 Q. Okay. Let's talk about the transaction. What is the
5 transaction between Vitol and the Sargent Family which
6 created Vault?

7 A. I don't know the details.

8 Q. You just said you did.

9 A. No, I didn't.

10 Q. You just told me it -- you knew that it was part of
11 Vitol.

12 MR. AURZADA: Argumentative, Your Honor.

13 THE COURT: Sustained.

14 BY MR. PATTERSON:

15 Q. Do you know or do you not know?

16 A. What?

17 Q. I think I'll leave that one on the record. Nick Fay
18 from Vault, not Vitol, Vault, Good morning, Eric and Steve.
19 Would you both be available for a call early this morning
20 with Chris Bake and our team? As soon after 2:00 p.m. UK
21 as you can manage would be good, as Chris has to leave mid-
22 afternoon. We are considering -- we -- being Vault, right,
23 this is coming from Vault.

24 MR. AURZADA: Objection, Your Honor.

25 THE COURT: What is the objection?

1 MR. PATTERSON: What's the objection?

2 MR. AURZADA: If he has a question, he should ask
3 it. He's just otherwise reading the document.

4 MR. PATTERSON: It's already in evidence. I'm
5 allowed to do that. What's the objection?

6 THE COURT: Overruled.

7 MR. AURZADA: Your Honor?

8 MR. PATTERSON: That I'm reading something from
9 evidence?

10 MR. AURZADA: (Indiscernible - 12:05:28)
11 evidence.

12 THE COURT: Hold on a second. Guys. Hey, I need
13 both of you, tone the temperature down. We can just ask
14 questions and keep it going. I --

15 MR. PATTERSON: Your Honor, I'm allowed to
16 provide a basis for my question and refer to evidence in
17 the record, which is all I'm doing.

18 THE COURT: I completely understand that. I'm
19 talking about tone.

20 MR. PATTERSON: Yes, sir.

21 THE COURT: I -- why don't you just ask
22 questions, but he's allowed to read the document. It's in
23 evidence.

24 BY MR. PATTERSON:

25 Q. We are -- we, he's referring to Vault, right?

1 A. I don't know that.

2 Q. Where is this email from? What's the source?

3 A. Nick Fay.

4 Q. All right. Let's go back here. Nick Fay, and his
5 signature is from what company?

6 A. Vault.

7 Q. Okay. So when Nick Fay says we on a business email,
8 who would you think he's referring to?

9 A. He could be referring to himself and the other parties
10 of Vault, or he may be talking about we as in the group
11 that's discussing this business.

12 Q. All right. We are considering the following three
13 options with few comments/issues listed below that occurred
14 to me. Speaking for Vault. Number one, how much
15 adaptation of the agreement that you have made -- do Vault
16 need to make in order to step in and work the what? What
17 does it say?

18 A. Are you asking me to read the --

19 Q. Yeah. What's the next word?

20 A. JV.

21 Q. JV. With Vit Fuel and GCAC. So doesn't this indicate
22 to you that Mr. Fay believes there's an existing joint
23 venture with GCAC?

24 A. Or one's being discussed.

25 Q. Or one's being discussed. But it says what it says.

1 Number one, would GCAC accept the material changes to the
2 agreement? Newco (phonetic) team would have to change
3 (indiscernible - 12:07:42) or any other asphalt trader
4 cannot be part of it. What role does AJ intend to play in
5 this joint venture? How does Vault finance the 10 to 15
6 million working capital? Do we have Eric to support --
7 Eric's support to run the fuel side with Roberto looking at
8 asphalt. All right?

9 So Vault is looking to step in, and modify, and/or
10 change the joint venture with GCAC so they can be involved.
11 Isn't that your understanding?

12 A. No. My understanding is all those things have to be
13 addressed in order for a JV to occur.

14 Q. Okay. Option two -- I'm sorry. I forgot one thing.
15 If you look at paragraph 11 of this email from Nick Fay,
16 he's asking about changes, but he references the agreement.
17 Do you see that? Material changes to the agreement. Why
18 would he reference an agreement if what you say is true,
19 there wasn't an agreement?

20 A. They were discussing an agreement, so --

21 Q. Okay. But that's not what he says, right? You would
22 agree with me there.

23 A. Well, he refers to an agreement.

24 Q. That's right. What's an agreement to you? Tell me
25 what you understand an agreement to mean?

1 A. An agreement is -- in this context, it's an agreement
2 that's being discussed. It's obviously not finalized,
3 otherwise --

4 Q. It's obvious? Show me why it's obvious.

5 A. Because he's got issues, and he desires to adapt the
6 agreement, and change it, and the issues that have to be
7 addressed.

8 Q. Right. He wants to adapt the agreement, right? Which
9 means there's an agreement that he wants changed.

10 A. I don't think it's clear.

11 Q. You don't?

12 A. No. I think it's there -- it could be -- it's an
13 agreement being worked at the ink level, or it's being
14 discussed broadly. It's not clear.

15 Q. Okay.

16 A. If there was an agreement, there would be an
17 agreement.

18 Q. And it would be referred to as an agreement, right?

19 A. No. We would have evidence of there being the
20 agreement.

21 Q. Okay.

22 A. It would be signed. It would be, this we agreed, and
23 signed.

24 Q. Okay. Let's keep going and we'll come back to that.

25 But this email is from Vault, and it says we are

1 considering the following three options. We being Vault,
2 are considering three options. Number one, adapt the
3 agreement. Right? Number two, if we leave joint venture
4 to run, more or less as proposed, can Vault have a
5 preferred or sole off taker role at a price that's
6 attractive? Do you see that?

7 A. Yeah. It clearly right there, it states it's a
8 proposal, not a finished agreement.

9 Q. In your mind, you read this and say there's no deal.
10 I read it and it says if we leave joint venture to run,
11 which means there's a joint venture, right?

12 A. More or less as proposed. Not it's finalized. Not
13 it's agreed. Not it's --

14 Q. Okay.

15 A. As proposed.

16 Q. All right. And Vault wants to know, how do we manage
17 the presence of the Vic, what's Vic?

18 A. Vitol, Inc.

19 Q. That's you, right?

20 A. Yeah.

21 Q. Vault wants to know. How do we manage the presence of
22 Vitol, Inc., GCAC joint venture, and Vault in the USGC
23 asphalt market with other players? What does that mean to
24 you?

25 A. I'm not sure. Perhaps it alludes to he worries about

1 Bolero (phonetic) not liking the -- a joint venture.

2 Q. Right. He also asked, where does the asphalt P&L,
3 which is profit and loss, right?

4 A. Yes.

5 Q. Right? Of joint venture go? He wants to know where -
6 - how you're splitting the profits in the joint venture,
7 right?

8 A. If there is one, yeah.

9 Q. Right. Option three, exit and close the joint venture
10 completely. Why is that an option if there isn't a joint
11 venture?

12 A. I don't know what he means by that.

13 Q. You don't? Well, there's only six words in that
14 sentence.

15 A. Well, it could be he's saying we -- by that he means
16 we close all discussions.

17 Q. Well, he could mean that, but that's not what it says,
18 right?

19 A. Well, it could mean that.

20 Q. Sure, it could. It could also mean the sky is blue,
21 but that's not what it says, right?

22 A. No, it --

23 Q. You would agree with me?

24 A. No, I would not.

25 Q. You wouldn't agree with me?

1 A. No, it can't possibly mean the sky is blue --

2 Q. Exit and close the joint venture completely. You
3 believe that's open to interpretation?

4 A. Yes.

5 Q. So if there's not a joint venture in place, how would
6 it be an option to close that joint venture? How do you
7 close something that doesn't exist?

8 A. By close, it could mean that close means finalize. As
9 you close the deal. You finalize it.

10 Q. You close the purchase of a piece of land. I get
11 that. Close itself has multiple definitions. I agree with
12 you. However, in context, that's not what it means, does
13 it?

14 A. Like I said, I think it means a lot of different
15 things.

16 Q. Okay.

17 A. I'm not sure what it means.

18 Q. Exit and close the joint venture completely. How do
19 you exit and close under your interpretation completely?
20 How can you do both of those things? If you exit it,
21 you're not going to finalize it, right?

22 A. If you close, it could be -- close it could be cease
23 discussions. Close also under your interpretation means
24 implies a JV that is not open.

25 Q. Okay. You desperately do not want to acknowledge that

1 there could have been an existing joint venture on July
2 31st; isn't that true, Mr. Loya?

3 MR. AURZADA: Argumentative.

4 THE COURT: Overruled.

5 THE WITNESS: No.

6 BY MR. PATTERSON:

7 Q. Then why do you refuse in the face of clear language
8 that there could possibly be a joint venture on July 31st,
9 2017? Why?

10 A. I disagree with your interpretation of what I'm doing.

11 Q. And I'm asking you why it's so hard for you to say
12 under oath that that's a possibility. You've told --
13 you've given me three different possible interpretations of
14 this sentence, and none of them include the existence of a
15 joint venture. Why is that?

16 A. Because I was adding those three possibilities to the
17 possibility that you were making of it being a closed -- a
18 done deal.

19 Q. Okay. So you were adding to my interpretation. So
20 I'm going to give you the opportunity. You would agree
21 with me, would you not, that one interpretation is that
22 there was an existing joint venture, and you should stop
23 and close it immediately?

24 A. (Indiscernible - 12:15:55). I read it to basically as
25 the most likely interpretation to be there is an open JV

1 discussion.

2 Q. Okay. And what I asked you, since you've given three
3 or four possible interpretations of paragraph three, I'm
4 asking you, would you agree with me under oath that one
5 interpretation is that there is an existing joint venture
6 on July 31st, 2017, and Vault is suggesting that Vitol Inc.
7 close it, and exit completely. Isn't that a reasonable
8 interpretation of paragraph three, Mr. Loya? A
9 possibility.

10 A. It would be bad English, but it's possible.

11 Q. Okay. It's bad English according to you.

12 A. Yes. I struggle with the word completely.

13 Q. You do?

14 A. Exit and close it --

15 Q. Why? Why does that -- why do you struggle with that?

16 A. Completely means implies that the JV is open.

17 Q. Right.

18 A. That it's under discussion, it's not closed.

19 Q. Exactly. That it exists, right?

20 A. The discussions exist. That's what it implies, in my
21 view.

22 Q. Okay. You think it's only discussions. Well, let's
23 go back to an earlier part of this email. First numbered
24 paragraph, how much adaptation of the agreement that you
25 have made. Is there some kind of confusion there with that

1 English? The agreement that you have made. That refers to
2 an agreement that's in existence, right?

3 A. But he still has to adapt a lot more details.

4 Q. If Vault wants to get involved, or Vault's going to
5 allow it to go forward. I agree. That's what Mr. Fay is
6 saying. If this is going to continue, if you guys are
7 going forward with this joint venture, we need to do one of
8 three things: make changes, right, to the agreement; make
9 changes to management; or exit and close the joint venture
10 completely, right? Isn't that the gist of this email?

11 A. In order to continue and have an agreement, I have the
12 following objections. That's how I read that note.

13 Q. Okay. Yeah. So let's go -- see the follow up to this
14 email, all right, from Mr. Fay from Vault. And so Mr. Kuo
15 responds to Mr. Fay, right, the next day. Nick, any idea
16 which way you guys are leaning on this? Bunch of loose
17 ends on our side, and looking for some direction from you
18 to decide how we proceed with current items. Thanks. Do
19 you see that?

20 A. Yes.

21 Q. So why is Mr. Kuo going to Mr. Fay, looking for
22 direction, instead of you?

23 A. Because that's how Vitol works.

24 Q. No. Yesterday, you told me a joint venture comes to
25 you. If it involves more than one transaction, you approve

1 it.

2 A. Yes.

3 Q. Period.

4 A. Correct.

5 Q. Okay. You would agree with me this joint venture
6 involved more than one trade?

7 A. Yes. The discussions which were --

8 Q. All right. And your testimony was it comes to you.

9 Now, why was this not coming to you? Why was it going to
10 Mr. Fay?

11 A. Because they're trying to put together the joint
12 venture. They're discussing it and trying to put it
13 together.

14 Q. No.

15 A. It comes to me for final decision.

16 Q. Okay.

17 A. Which I never gave.

18 Q. Right. Well, we looked at the prior email. That's
19 not exactly what's going on here, right? Vault is saying
20 you need to fix this, right? We're the king of asphalt.
21 We don't want you guys doing this the way you're doing it.
22 Some changes need to be made. Isn't that what's happening?

23 A. They're saying some changes need to be made for this
24 to be a joint venture.

25 Q. All right. Let's keep going. Mr. Fay responds,

1 right? Dan has reached out. Who's Dan?

2 A. Sargent.

3 Q. Dan Sargent. Mr. Sargent, who's Vault, right?

4 A. Yes.

5 Q. Has reached out to AJ and outlined that we see the
6 three options below. AJ was very keen to work with Vault
7 to avoid number three. What was number three again? Oh
8 yeah, exit and close the joint venture, right? So AJ was
9 very keen to work with Vault to avoid number three. He
10 didn't want it terminated. We've sent him a list of the
11 info we require, we being whom? This is from --

12 A. It would probably be Vault in this case.

13 Q. Vault, right? Mr. Fay. He speaks for Vault. So
14 Vault has sent him a list of the info that Vault requires,
15 and we're waiting for the output. If we can come out of
16 this with flow at attractive price and limited downside,
17 then can see a good outcome. What does that mean? If we -
18 - if Vault can come out of this with flow. What would be
19 flow?

20 A. Flow would mean physical --

21 Q. Volume of asphalt, right?

22 A. Yes.

23 Q. All right. So if Vault can come out of this with an
24 inventory or a market for asphalt at an attractive price
25 and limited downside, then can see a good outcome. Devil

1 will be in the detail, of course, with AJ. Dan, Mr.
2 Sargent, is in Qatar now, and will be in Montreal Monday,
3 and we'll see AJ and Patrick with Roberto. What are the
4 loose ends? What are you hearing from AJ and Patrick. So
5 Nick is not aware there's loose ends, right? No one's told
6 him. So let's keep going.

7 A. I don't know that.

8 Q. Now, to kind of set the stage, you're aware that GCAC
9 and Vault were competitors, right?

10 A. Yes.

11 Q. Yeah. Right? So that's the genesis of this
12 discussion, the genesis of kind of the discord is that
13 Vault and GCAC compete in the world asphalt business,
14 right?

15 A. No, not necessarily. No. GCAC was a small operation.
16 Mainly they came across each other at times in the Gulf
17 Coast in the market.

18 Q. That's right. Vault is the big player -- the biggest
19 in the world, GCA is a small player, right? Didn't we talk
20 about this already?

21 A. No. The announcement made a reference to it being
22 with the largest asphalt company in the world.

23 Q. That's right.

24 A. (Indiscernible - 12:23:18) but --

25 Q. Okay. Back to my question. You would agree with me,

1 Vault, being the biggest in the world, GCAC is a small
2 player in the asphalt business, but they're competitors
3 nonetheless, right?

4 A. In the Gulf Coast region, yes.

5 Q. I didn't limit it. They're competitors, correct?

6 A. They compete.

7 Q. That's right. They're in the same business, they're
8 competitors. That's the problem here, isn't it?

9 A. There is no problem. They're just trying to put
10 together two companies.

11 Q. There is a problem because of the first email we read,
12 right? Vault says there's three options and one of them is
13 get out of this joint venture and close it. That's what
14 they're telling you, Vitol Inc., right? Because they're
15 the biggest in the world, right?

16 A. No.

17 Q. Right. So Mr. Kuo then on August 1st, 2017, responds
18 and says they want us to pay storage invoices, some other
19 miscellaneous costs, and I'm trying to push them off until
20 we get some clarity on direction. I think you can
21 definitely get flow and/or term supplied at attractive
22 pricing. That was always the objective. Nothing from
23 AJ/Patrick. They keep asking me where things stand.

24 Why are Mr. -- why is Mr. Brass unclear about where
25 things stand on August the 1st, 2017? Do you know?

1 A. Because he hasn't been told that there is no JV going
2 forward, or he wants one. I guess he doesn't know where it
3 is.

4 Q. How do you know that? Do you remember that?

5 A. No, I just -- I guessed.

6 Q. Okay. You're guessing again. I don't want you to
7 guess, all right?

8 A. That's why I said --

9 Q. Can we have that agreement? Because you're under
10 oath.

11 A. Yes. That's why I said --

12 Q. All right. You're swearing.

13 A. I said I guess.

14 Q. I don't want you to guess. If you don't know, I want
15 you to tell me you don't know. Can you do that?

16 A. I'll try very hard.

17 Q. All right. Well, no, I don't want you to try. Can we
18 have that agreement?

19 A. Well, no, I'm just saying I will do it but I'll make
20 sure I guess --

21 Q. Okay. So let's try this question again. Why was Mr.
22 Brass asking about where things stand on August the 1st,
23 2017. Do you know?

24 A. No.

25 Q. All right. Thank you. Mr. Fay then responds on

1 August the 1st, okay, not sure how to advise you here
2 (indiscernible - 12:25:58). We want to make something
3 work. It's all down to the people now, and that's a hard
4 call. Mr. Kuo then a week later, on August the 9th, is
5 pinging Mr. Fay. Nick, have there been any new
6 developments? I'm fielding multiple calls from Rio and
7 GCAC daily with both companies almost getting into panic
8 mode. Not sure if they want to dissolve this. What's
9 there to dissolve on August the 9th, 2017?

10 A. I don't know. I'd be guessing.

11 Q. But you just said you knew there wasn't a joint
12 venture, right?

13 A. I knew. I hadn't approved one.

14 Q. Right. It never came to you, right? Is Mr. Kuo doing
15 this on his own?

16 A. Not allowed.

17 Q. Not allowed. So what's there to dissolve?

18 A. I don't know.

19 Q. Who would know?

20 A. Whoever wrote those emails.

21 Q. Mr. Kuo, right?

22 A. If he's the one who wrote that email, he can tell you
23 what he meant by that.

24 Q. Okay. But you don't have any idea.

25 A. I would be guessing. No. I don't have any idea.

1 Q. Now, also yesterday, and I'm -- I'm moving around, but
2 we'll come back, I promise. But also yesterday, we talked
3 a little bit about what you described was the relationship
4 between Vitol and Mr. Brass and GCAC. And you talked about
5 it being financing, right?

6 A. Yes.

7 Q. And we talked about how you kept a security, you being
8 Vitol, and I asked you about a writing. And you said our
9 word is our bond. We don't do writings, right?

10 A. Correct.

11 Q. Our word is our bond, right?

12 A. It is.

13 Q. Okay.

14 A. Most of our transactions are done.

15 Q. Right.

16 A. Agreed verbally.

17 Q. Does that include your employees?

18 A. What do you mean by our employees?

19 Q. Mr. Kuo. You demand that of your employees, right?

20 A. Is he allowed to enter into --

21 Q. His word is his bond, right?

22 A. Transactions. When he enters into transactions, he's
23 speaking for Vitol.

24 Q. That's right.

25 A. In transactions, he's allowed, yes. In single

1 transactions.

2 Q. Right.

3 A. We do that.

4 Q. That's right.

5 A. Yes.

6 Q. Mr. Kuo is telling the world, we have a joint venture,
7 right?

8 A. I don't know what Mr. Kuo's saying.

9 Q. We're looking at it. Let's look at it again. If Mr.
10 Kuo says it, is it not true, but if you say it, it is true?

11 A. As far as I know, we did not have a joint venture. I
12 did not approve one.

13 Q. But you also said this was going through Vault, right?
14 So it wouldn't necessarily come to you. Which is it?
15 First, you defer to Vault and Mr. Bake, and said Mr. Kuo
16 was working through them. But now you're saying it had to
17 come through you. Which is it?

18 A. There was a -- it would have to go through me.

19 Q. All right.

20 A. What I said is if there's an agreement to be done, it
21 would have to be agreed with Vault as well.

22 Q. Why agreed with Vault?

23 A. Because they're operating in asphalt.

24 Q. They're competitors, right?

25 A. They're operating in the asphalt market. They were

1 trying to do.

2 Q. Right. So on August the 10th, Mr. Fay responds to Mr.
3 Bake, and Mr. Kuo, and Mr. Parsons. Again, Mr. Parsons is
4 a business development guy here, worked for you, right?

5 A. No.

6 Q. No? Who's Mr. Parsons? I apologize.

7 A. He's the head of fuel oil in London.

8 Q. London. London. So this is all London guys
9 communicating with Mr. Kuo. Do you know why you're not
10 included on this, or were you?

11 A. That's two questions. Which one do you want me to
12 answer?

13 Q. Fully aware of that, but it would be the same answer,
14 right? Were you included on this email?

15 A. No.

16 Q. Not are you listed. Were you included? It could be a
17 blind copy, right?

18 A. It could be.

19 Q. So Mr. Fay responds on August the 10th to Mr. Kuo,
20 Eric, as you know, there have been some meetings in
21 Montreal at AI. What's AI?

22 A. I don't know.

23 Q. Between the teams on Tuesday and Wednesday of this
24 week. I'm waiting for full update when Dan, that's Mr.
25 Sargent, right?

1 A. Yes.

2 Q. Gets in tomorrow. However, from brief telecon, I know
3 the following: the forward economics, which is what econs
4 stand for, right?

5 A. Yes.

6 Q. The forward economics remain unclear. Rio GCAC have
7 made no money for the last two and a half years. We need
8 to do some more work on that. I ask you and Steve Barth
9 for comment on these on Monday, the 7th. Please can you
10 respond. Next bullet point. GCAC advised they were
11 specifically instructed by VIC. VIC is what?

12 A. Vitol Inc.

13 Q. Vitol Inc., that's you.

14 A. That's the one that I was head of, yes.

15 Q. Right.

16 A. That's the one that I was head of.

17 Q. That's right. At the time, you were head of this,
18 right?

19 A. Yes.

20 Q. GCAC advised that they were specifically instructed by
21 VIC to not discuss this deal. Do you see that?

22 A. No. Your screen now is --

23 Q. I'm sorry.

24 A. I see it.

25 Q. Right. Is that true?

1 A. I don't know.

2 Q. What do you mean you don't know?

3 A. I don't know.

4 Q. Were you the CEO?

5 A. Yes.

6 Q. Of VIC?

7 A. Yes.

8 Q. Okay. And didn't you saw that a joint venture has to
9 come through you?

10 A. Yes.

11 Q. All right.

12 A. For final approval.

13 Q. Okay. And he wants to know why that they were
14 instructed that way, right? The whole market is talking
15 about your deal, and how it was done behind the back of
16 Vault. Do you see that?

17 A. Yes.

18 Q. I thought you said there wasn't a deal?

19 A. There wasn't a deal.

20 Q. Why is Vault --

21 A. There wasn't a joint venture. I don't know what kind
22 of deal they're talking about. There wasn't a joint
23 venture. Let's be clear.

24 Q. I know. You're very specific. Over and over. Why
25 are you so insistent to add that to every discussion we

1 have, Mr. Loya?

2 MR. AURZADA: Objection. Argumentative.

3 THE COURT: Sustained.

4 BY MR. PATTERSON:

5 Q. Is there a reason you feel the need to add the comment
6 there was no joint venture to every other answer, Mr. Loya?

7 MR. AURZADA: Same objection.

8 THE COURT: Sustained.

9 BY MR. PATTERSON:

10 Q. You can hear me okay, Mr. Loya?

11 A. Yes.

12 Q. All right. GCAC are trying to sell barrels onto the
13 USEC, I assume United States East Coast, in direct
14 competition with Vault. Do you see that?

15 A. Yes.

16 Q. At a personal level, you have failed to be straight
17 with me at every stage of this process. Do you see that?

18 A. Yes.

19 Q. On top as the Vitol guy in a Vault joint venture, I
20 have been having to apologize repeatedly as the details of
21 how you have deliberately bypassed my team have come to
22 light. Do you see that?

23 A. Yes.

24 Q. Now, you told me he was working with their team, and
25 not working with you. But their team says he was bypassing

1 their team, which -- right? Isn't that what he said?

2 MR. AURZADA: Compound question, Your Honor.

3 THE COURT: Sustained.

4 BY MR. PATTERSON:

5 Q. Did I read that correctly, Mr. Loya?

6 A. You read it exactly as it's written.

7 Q. Right. So Mr. Fay, who's Vault, is indicating that
8 this deal was done behind his back. Isn't that what he
9 said?

10 A. No.

11 Q. Well, let me read it again. You have failed -- you,
12 Mr. Kuo, which is VIC, to be straight with me at every
13 stage of this process. On top, as the Vitol guy in the
14 Vault joint venture, I have been having to apologize
15 repeatedly as the details of how you have deliberately
16 bypassed my team have come to light. Again, did I read
17 that correctly?

18 A. Yes.

19 Q. Is there something in there you didn't understand?

20 A. No.

21 Q. Was it unclear?

22 A. Your reading was as written, perhaps with --

23 Q. Were the words unclear?

24 A. No, the words are the words. I understand the words.

25 Q. And they're vague?

1 A. No.

2 Q. They confusing?

3 A. No.

4 Q. All right. So he says that Mr. Kuo wasn't working
5 with him to put this joint venture together, right?

6 A. It says what it says right there.

7 Q. I'm asking you if you agree with me that that's what
8 it says.

9 A. Not exactly.

10 Q. Not exactly. What do you think it says? Interpret it
11 for me.

12 A. He's saying I'm upset that you haven't been completely
13 forthright with me. It puts me in a bad situation. That's
14 what it says.

15 Q. All right. And you've left out the last part. You
16 have deliberately bypassed my team. What does that mean to
17 you?

18 A. To me, it means that he's not been forthright with
19 either Nick or the other guys involved in the discussion.

20 Q. Okay. Forthright isn't in there. Forthright means
21 not really honest. This says bypassed. What does bypass
22 mean to you?

23 A. Forthright, I summarized to mean failed to be
24 straight.

25 Q. Okay. And I asked you to go to the second part of the

1 sentence that says they were bypassed. What does that mean
2 to you?

3 A. It means that they were not included in discussions he
4 thought they should have been.

5 Q. That's right. So if they weren't, your testimony was
6 Mr. Kuo was working with Vault to get this deal done, this
7 joint venture, but Vault is saying they weren't included.

8 A. Both --

9 Q. That means it came to you, right?

10 A. No. It means he's unhappy with how they're working.

11 Q. Is it your testimony that Mr. Kuo is out on an island
12 doing his own thing, not telling anybody?

13 A. Not at all.

14 Q. Right. He wouldn't stick around, would he? You're
15 not going to keep someone that does that, right?

16 MR. AURZADA: Argumentative.

17 THE COURT: Overruled.

18 BY MR. PATTERSON:

19 Q. Right?

20 A. Ask me again, please.

21 Q. You're not going to keep someone employed that does
22 things out on their own without following the right
23 approvals, the channels, especially with so much money,
24 right?

25 A. No. It would be a lot of room for him to negotiate a

1 deal?

2 Q. As a Vitol shareholder, that's Mr. Fay, right?

3 A. Yes.

4 Q. He's a shareholder of VIC?

5 A. No.

6 Q. Of Vitol Group?

7 A. Yes.

8 Q. Is he on the Board with you?

9 A. No.

10 Q. As a Vitol shareholder, I sincerely hope there will
11 not be damages for VIC, which is you, right? Vitol Inc.?

12 A. Yes.

13 Q. On exit. Why would we be concerned about damages on
14 an exit of a deal that doesn't exist?

15 A. He may be concerned about whether we stopped doing
16 business with GCAC. I can only guess.

17 Q. Really? That doesn't make sense to you at all?

18 A. It makes sense to me he says he hopes there are no
19 losses for VIC.

20 Q. Right. On exit. What are you exiting from?

21 A. Whatever transactions he's doing with GCAC. The rest
22 of the sentence speaks for itself.

23 Q. I would agree with you, Mr. Loya.

24 A. No deal was signed.

25 Q. Mr. Kuo does respond. Nick, I'm a bit taken aback at

1 your comments below and disagree with your characterization
2 of my actions. From the beginning, there was never any
3 intention to harm Vitol or Vault, but more of a compliment
4 to the fuels business. I'm open to discuss any and all
5 concerns. In the end, Vitol is following Vault's lead on
6 this deal, and is happy to provide U.S.-based support if
7 Vault wants to go forward with GCAC, right? So Mr. Kuo is
8 acknowledging, we're going to do what you want. You tell
9 us, Vault, what you want us to do. Right?

10 A. Yes.

11 Q. Okay. So back to my -- an often-asked question today.
12 Who was making the decision on this joint venture? Vault
13 or you?

14 A. Ultimately for me, for there to be a joint venture, it
15 would have to be approved by Vitol Inc.

16 Q. Right. And in fact, isn't it true that the joint
17 venture was approved without telling Vault. They found
18 out, and said stop. Exit. Isn't that true?

19 MR. AURZADA: Objection. It calls for facts not
20 in evidence.

21 THE COURT: Sustained.

22 BY MR. PATTERSON:

23 Q. Isn't it true that the joint venture was in existence
24 on August the 1st? The GCAC --

25 MR. AURZADA: Argumentative and calls for facts

1 not in evidence.

2 MR. PATTERSON: I think all the facts are there,
3 Judge.

4 THE COURT: Overruled. You can answer that
5 question.

6 THE WITNESS: No.

7 BY MR. PATTERSON:

8 Q. No. But Vault was demanding that you exit an
9 agreement that didn't exist? An arrangement that didn't
10 exist? Is that your testimony today?

11 A. They were asking to exit the discussions.

12 Q. Okay.

13 THE COURT: Guys, why don't we take five minutes?
14 We've got to -- the phone line got hung up. I want to dial
15 it back in, and then maybe we can go until -- I'll come
16 back in five minutes and then maybe we can go to 1:30 and
17 then see where we are.

18 MR. PATTERSON: Sure. Perfect.

19 THE COURT: Mr. Loya, I'll remind you that you're
20 still under oath. If you need to use the restroom or
21 something, now is the time. Thank you.

22 THE WITNESS: Thanks.

23 THE CLERK: All rise.

24 (Recessed at 12:42 p.m.; to reconvene at 12:49
25 p.m.)

1 THE COURT: I just wanted to make sure. You
2 know, you made me think about something. Rosh Hashanah is
3 when, the last week in September?

4 MS. GOOTT: Yes.

5 THE COURT: The 20 --

6 MS. GOOTT: Third or something.

7 THE COURT: Can you let me know the dates,
8 because I'm -- we're definitely going to block out those
9 dates to the extent -- every party should just be made
10 aware. I just want it on the record, but --

11 MS. GOOTT: (Indiscernible - 12:51:38).

12 THE COURT: No, no, no. I'm incredibly --

13 MS. GOOTT: (Indiscernible - 12:51:40).

14 THE COURT: No, no, no. I know it changes from
15 year to year. I thought this year it was like the 25th to
16 the 27th, but I could be wrong. Or sundown on the 25th
17 through the 27th.

18 MS. GOOTT: (Indiscernible - 12:51:54) sundown or
19 if that's --

20 THE COURT: Can you just let me know, because
21 that -- I know it may slip into that Monday or Tuesday, the
22 26th and the 27th, and I -- so --

23 MS. GOOTT: I appreciate that.

24 THE COURT: Yeah. We'll block out those dates.

25 MS. GOOTT: Yeah. (Indiscernible - 12:52:10).

1 THE COURT: No, no, no. Yeah, but we'll -- that
2 whole week is bad. No, but I'm trying to finish the trial
3 in September.

4 MS. GOOTT: Perfect. Then it will only
5 (indiscernible - 12:52:21).

6 THE COURT: So it will just be Rosh Hashanah,
7 right? Just for those. Okay. So just make sure we know
8 the dates. But I just want to make sure that among the
9 other dates, that one is definitely blocked out, and then
10 we can talk about other stuff.

11 MS. GOOTT: Yes. Monday is blocked out.
12 Wednesday, I have a medical procedure (indiscernible -
13 12:52:47).

14 THE COURT: No, no, no. That's what I'm saying,
15 but I always thought it was -- let's just figure it all
16 out. But those three days we'll block out.

17 MS. GOOTT: I've been told (indiscernible -
18 12:52:54).

19 THE COURT: Okay. And then maybe like the 30,
20 31st, would that? I'm just thinking about -- no, there's
21 no 31st in September. The 30th or something like -- 29th
22 or 30th.

23 MS. GOOTT: (Indiscernible - 12:53:11), I could
24 do September 30th.

25 THE COURT: Okay. Let's just -- I'm just

1 thinking of dates in mind. But I wanted to make sure I
2 carved that out because you got me thinking about that and
3 --

4 MS. GOOTT: Thank you. I really appreciate that.
5 September 29th or 30th should be -- I'll be fine
6 (indiscernible - 12:53:27).

7 THE COURT: Okay. Let's just -- we'll have a
8 more fulsome on the record, but everybody knows those dates
9 are out.

10 MS. GOOTT: Thank you.

11 THE COURT: Okay.

12 MS. GOOTT: (Indiscernible - 12:53:49).

13 THE COURT: From a scheduling standpoint, before
14 we begin, let's go until -- let's do a hard stop at 1:30.
15 Folks can break for lunch, and then we'll pick back up
16 around 2:15 and then keep going.

17 MS. GOOTT: (Indiscernible - 12:54:51).

18 THE COURT: Do you all need a few minutes? Do
19 you want to start at 1:00? Do you need a few minutes, Mr.
20 Patterson? I'll --

21 MR. PATTERSON: Just. Yes. Three minutes --

22 THE COURT: Okay.

23 MR. PATTERSON: -- if that's okay.

24 THE COURT: Yeah. No. It's 12:55. Let's start
25 at 1:00. I'll give you a moment. Okay.

1 THE CLERK: All rise.

2 (Recessed at 12:55 p.m.; reconvened at 1:00 p.m.)

3 THE COURT: Mr. Loya, I will remind you that
4 you're still under oath. Back on the record in *Vitol v.*
5 *Brass*. Mr. Patterson, are you ready to begin?

6 MR. PATTERSON: Yes, sir.

7 THE COURT: Okay. I've given you the
8 capabilities.

9 MR. PATTERSON: Thank you, Your Honor.

10 BY MR. PATTERSON:

11 Q. All right, Mr. Loya, now I asked you earlier about
12 your insistence throughout this proceeding that there was
13 never a joint venture. And isn't it true that this email,
14 August the 10th from Nick Fay to Mr. Kuo, isn't it true
15 that this summarizes Vitol's concern in dealing with Mr.
16 Brass and GCAC, where it says, I sincerely hope there will
17 not be damages for VIC on exit. Isn't that true? Isn't
18 that a concern -- wasn't that a concern of yours as CEO of
19 VIC?

20 MR. AURZADA: Objection. Compound question.

21 THE COURT: Overruled.

22 THE WITNESS: You were asking me whether it's
23 true that, and also it's my concern or belief -- I'm not
24 sure. Can you ask the question again, please?

25 BY MR. PATTERSON:

1 Q. Yes. Isn't it true that your insistence that there
2 hasn't -- there was never a joint venture with GCAC or Mr.
3 Brass, isn't it true that that insistence is based upon
4 this sentence in this email which says, I sincerely hope
5 there will not be damages for VIC on exit?

6 A. No.

7 Q. What was he talking about? He's a shareholder of
8 Vitol. What was he talking about?

9 MR. AURZADA: Calls for speculation.

10 THE COURT: Sustained.

11 BY MR. PATTERSON:

12 Q. What is your understanding he was talking about?

13 A. I would be guessing what he's talking about.

14 Q. I don't want you to guess. I want you to read it and
15 tell me what it means to you. I don't want you to
16 speculate on what you think he says. I want you to read it
17 and tell me what it means.

18 MR. AURZADA: Objection. Calls for speculation.

19 THE COURT: Sustained.

20 MR. PATTERSON: His understanding of a sentence,
21 Your Honor. I'm not asking him to speculate. I'm asking
22 him to read and tell me what it means to him. That's not
23 speculating as to anybody.

24 THE COURT: You said what it means. You didn't
25 add that to him on the last question.

1 BY MR. PATTERSON:

2 Q. All right. Would you read that question and tell me
3 what it means to you?

4 A. As a Vitol shareholder, I sincerely hope there will
5 not be damages for VIC on exit, as you have repeatedly
6 assured us that no deal was signed. To me, it says if they
7 can't come to an agreement, he hopes there are no losses,
8 especially because there was never a deal signed. I mean,
9 it's what it says.

10 Q. It's interesting that you said losses instead of
11 damages. Is that the same word to you? Losses and
12 damages.

13 A. No, not necessarily. Damages could be more
14 encompassing.

15 Q. You incurred damaged when a trade goes the wrong way?

16 A. There could be losses. I might just -- thinking it
17 would be damages -- now, we're speaking of the word damage.
18 Damages, it could encompass reputational damage.

19 Q. Right.

20 A. So --

21 Q. It could. I'm asking you what it means to you, if
22 it's the same or not the same.

23 A. No, perhaps when I read it, it was probably -- I
24 narrowed it too much. I misread it. It could be damages.

25 Q. Like from a lawsuit?

1 A. No.

2 Q. No?

3 A. More reputational, I think.

4 Q. Really? You don't read this as possibly encompassing
5 damages from a lawsuit?

6 A. No. That did not occur to me.

7 Q. And I'm asking you, again, is that not a reasonable
8 interpretation, sitting here today?

9 MR. AURZADA: Calls for speculation, Your Honor.

10 THE COURT: Overruled.

11 THE WITNESS: It didn't cross my mind. No.

12 BY MR. PATTERSON:

13 Q. My question is isn't that a reasonable interpretation,
14 sitting here today? Yes or no.

15 MR. AURZADA: Same objection, Your Honor.

16 THE COURT: Overruled.

17 THE WITNESS: I think damages encompasses a lot
18 of things, including potential lawsuit.

19 BY MR. PATTERSON:

20 Q. Excuse me. Isn't it true, Mr. Loya, that this email
21 exchange prompted a phone call you had with Mr. Bake?

22 A. I don't know that.

23 Q. Isn't it true that this email prompted your meeting
24 with Mr. Kuo that we put up on the Board in which you said
25 stop?

1 A. No.

2 Q. Okay. What did? What prompted that meeting with Mr.
3 Kuo, where you told him to stop the joint venture talk?

4 A. My --

5 MR. AURZADA: Mischaracterizes the prior
6 testimony.

7 THE COURT: Sustained.

8 BY MR. PATTERSON:

9 Q. Did you not have a meeting with Mr. Kuo in which you
10 instructed him to terminate the joint venture discussions?

11 A. Yes.

12 Q. Okay. And, in fact, you testified to that yesterday;
13 did you not?

14 A. Yes.

15 Q. All right. What prompted that meeting?

16 A. The prior discussion I had with Chris Bake.

17 Q. A telephone call, right?

18 A. Yeah.

19 Q. Right. And you said it was around this time. Could
20 have been middle to late August, right?

21 A. Yes.

22 Q. Was it prompted by this email exchange? Was that
23 phone conversation with Mr. Bake prompted by this email
24 exchange?

25 A. I don't know.

1 Q. But it was around the same time, right?

2 A. Around. Yes.

3 Q. Was it before or after your meeting with Mr. Kuo?

4 A. My conversation with Chris Bake?

5 Q. This email exchange?

6 MR. AURZADA: Objection, Your Honor. Vague.

7 THE COURT: Overruled.

8 THE WITNESS: I don't know.

9 MR. PATTERSON: Give me one second, Your Honor.

10 I may have just one more topic, but I'm close to being
11 finished.

12 THE COURT: Yeah.

13 (Pause)

14 MR. PATTERSON: I apologize for the delay. One
15 minute and I'll be ready.

16 THE COURT: No, that's fine.

17 (Pause)

18 BY MR. PATTERSON:

19 Q. Okay, Mr. Loya, I put on the screen a document. I'd
20 ask you to look at it for a minute. And I'll scroll
21 through. If you need me to stop, let me know. And I'm
22 going to ask you if you recognize this document.

23 A. Can you go back? Stop there.

24 Q. I'm just going to ask if you recognize it. That's all
25 I want to know.

1 A. No.

2 Q. All right. How about this document? Do you recognize
3 this document?

4 A. Which one?

5 Q. The one on the screen.

6 A. You moved too fast. Can you go back?

7 Q. Okay. Just tell me to slow down and I will.

8 A. Right there. Stop.

9 Q. I just need to know if you recognize it or not.

10 A. I think we saw it yesterday, did we not?

11 Q. I'm asking you if you recognize this document.

12 A. You're moving too fast.

13 Q. All right. Just tell me to slow down. That's all.

14 A. Stop right there. I recognize this one. I think it
15 was brought up yesterday.

16 Q. Okay. And that's the only time you recognize it from
17 yesterday? You recognize it because you believe it was put
18 up on the screen yesterday?

19 A. Because I remember reading it yesterday.

20 Q. You remember reading this one yesterday?

21 A. Or something very similar to it regarding the same
22 subject. So perhaps it was a -- part of this. You're
23 showing me several pages. Some of those I recognize from
24 yesterday.

25 Q. All right. You don't recognize those documents from

1 any other time?

2 A. No.

3 Q. You haven't seen them at any other time? You haven't
4 seen them before yesterday, if you saw them yesterday?

5 Right?

6 A. I'm sorry. Ask that again.

7 Q. You haven't seen either of those documents before
8 yesterday, if you saw them yesterday?

9 A. Yeah. I have -- I don't recognize them. I may have
10 seen them, but if I did, I forgot.

11 Q. Okay. You wouldn't have forgot if it was a week ago,
12 right? Or two weeks ago?

13 A. No, I wouldn't.

14 Q. No. You wouldn't forget that. You would remember.

15 A. No, it would be the --

16 Q. Right. I'm just confirming. If it was recently, in
17 the last month, you would remember reading these emails?

18 A. I only seen two documents. And I would recognize one
19 of them. The other one, it was a short email.

20 Q. Right. And my follow up was --

21 A. I would recognize one. I'm not sure I recognize the
22 short email.

23 Q. All right. And my question was, if you had read or
24 reviewed these emails in the last month, you would remember
25 either one.

1 A. I haven't seen them.

2 Q. Okay. I'm putting up on the screen what's marked as
3 Exhibit 104-16 for the record, and I would ask Mr. Loya --
4 well, I'll offer it and see where it goes.

5 MR. AURZADA: It's clearly a hearsay statement,
6 Your Honor. I object on the basis of hearsay.

7 THE COURT: Are you objecting?

8 MR. AURZADA: I'm objecting on the basis of
9 hearsay, yes.

10 THE COURT: Thank you.

11 MR. PATTERSON: That's fine. We'll bring him
12 back when we're able to authenticate this through another
13 witness.

14 On reconsideration, the objection, and I wasn't
15 paying attention. Ms. Goott was paying attention. The
16 objection is to hearsay, however, these are party opponent
17 statements. These are clearly emails -- not the
18 foundation, these are Vitol documents. But they're not --
19 they're an exception to hearsay, and I think they're even
20 defined as not hearsay because they're statements of party
21 opponent, and it's against their interest.

22 THE COURT: Yes?

23 MR. AURZADA: Okay. First, no foundation has
24 been laid for this document.

25 MR. PATTERSON: They didn't object to foundation.

1 MR. AURZADA: Second, it is a hearsay statement.
2 And if you'll scroll to the top, it's from Daniel Sargent,
3 who is not a Vitol employee.

4 MR. PATTERSON: That is not what the testimony is
5 provided today. Vault is party of Vitol is what all the
6 testimony today was.

7 THE COURT: I thought Vault was a subsidiary of
8 Vitol, at least the UK entity.

9 MR. AURZADA: And Mr. Sargent is not a Vitol
10 employee.

11 (Pause)

12 THE COURT: Anything else you wish to add,
13 counsel? I'm not going to admit it at this time, Mr.
14 Patterson. But you've got the right to recall him if you
15 get it in another way.

16 MR. PATTERSON: Great. Just as long as he's not
17 released, I'm good with that, Judge.

18 MR. AURZADA: Your Honor, I see no basis not to
19 release the witness when he's done.

20 THE COURT: Because we're going to hold a trial
21 where everybody's going to get everything they want to say
22 in the month -- this month, and then I'm going to rule. So
23 I'm holding everyone.

24 MR. AURZADA: Thank you, Your Honor.

25 MR. PATTERSON: With that, Your Honor, I think

1 that we're good with Mr. Loya until recalled.

2 THE COURT: Okay. Let me ask, we've got about
3 ten minutes before we break. Let me ask Vitol, do you
4 y'all have any redirect that you want to take up now, or do
5 you want to wait until we come back? I'm going to leave
6 that up to you. I just don't -- I don't know how much time
7 you need. That's --

8 MR. AURZADA: Your Honor, I think it's going to
9 be 25 to 30 minutes. I'd rather not break it up, if that's
10 okay.

11 THE COURT: Okay. Yeah, no, no, that's
12 completely fine. That's why I asked. So why don't we just
13 break for lunch then and come back at -- let's just do --
14 let's keep our time, 2:15, and we'll come back.

15 Mr. Loya, I will remind you that you are still
16 under oath and you're not to discuss your testimony with
17 anyone. We'll break for lunch and we'll come back at 2:15.

18 Ms. Goott, if you can, before we begin, just have
19 those dates ready we were just talking about. I wanted to
20 keep Rosh Hashanah out of the dates that we -- that we keep
21 that window out, and obviously like the day after. So
22 thank you.

23 MR. AURZADA: Thank you, Judge.

24 THE CLERK: All rise.

25 (Luncheon recess taken at 1:19 p.m.; to reconvene

1 at 2:18 p.m.)

2 THE CLERK: All rise.

3 THE COURT: All right. Before we get started on
4 redirect, I took a look at my calendar again. So in terms
5 of available dates, I'm going to block out the 26th through
6 the 28th of those days. If we have to come in -- probably
7 do the afternoon of the 29th, but I'm telling everyone I've
8 got to -- I'm going to be in Victoria on the 30th, and
9 that's the last day that we're going to hold a trial. So
10 we may ultimately end up where the case originally started
11 in Victoria.

12 So I'm just giving everyone a heads up. And I am
13 out the 22nd and the 23rd. And we're not doing the -- so
14 the 22nd through the 26th are out. We'll see where this
15 goes. The 30th will be the grand finale, and we'll do it
16 in Victoria. And I guess Judge Isgur as a hearing on that
17 date. I'm -- if we don't have to go to Victoria, I won't
18 do it, but I've got to be there on that date. If any other
19 days work -- we'll work with my case manager to fit in as
20 many times in what we can do. We'll see where that goes.
21 Lovely accommodations. I'm sure you'll all enjoy it.

22 THE WITNESS: Your Honor.

23 THE COURT: Not you, Mr. Loya. I'm just giving
24 you thoughts. We can fit them in wherever we get them in.
25 I don't want anyone to commit. I'm just telling you what

1 days are out. That's, perhaps, the smartest thing for me
2 to say. The 22nd through the 28th are out. I am out on
3 those dates. So that is the better way of communicating
4 it. Yes.

5 MR. PATTERSON: (Indiscernible - 2:20:34).

6 THE COURT: No, I apologize. 22 through 28 are
7 out. 29th in the afternoon is in here in Houston. The
8 30th, Victoria.

9 MR. PATTERSON: (Indiscernible - 2:20:52).

10 THE COURT: So anything before the 22nd would be
11 Houston. Just keep that in mind. Just easier for me to
12 say it now before you begin your -- okay. Yes, Mr.
13 Patterson?

14 MR. PATTERSON: (Indiscernible - 2:21:15).

15 THE COURT: Okay. Yes. Mr. Loya. And can you,
16 Mr. Loya, just if you can go to the opposite side of the
17 hallway? There's a bench there. I just want to make sure
18 that you're --

19 THE WITNESS: (Indiscernible - 2:21:29).

20 (Witness exited the courtroom)

21 THE COURT: Okay. Let me just announce that
22 we're back on the record in *Vitol v. Brass*, September 2nd.
23 It's now 2:20. Mr. Patterson?

24 MR. PATTERSON: Judge, we -- there was evidence
25 that the witness reviewed two documents prior to his -- in

1 preparation for his testimony. Counsel forwarded two
2 documents to me. I showed those to the witness. The
3 witness could not identify either document as having seen
4 either of those documents in the past month.

5 Now, what do we do with that? I'm not really
6 sure. But I think there needs to be -- I think I am
7 entitled to further investigate unless there is some other
8 evidence. I'm not suggesting someone's not necessarily
9 being forthcoming, but all I know, the only evidence is he
10 reviewed two. I was sent two. He testified under oath
11 he's never seen -- he saw one, he thought yesterday in
12 evidence, and had never seen the other one. And I think --
13 I don't know what you want to do with it. I'm not sure
14 what I want to do with it yet, but I want everyone to know
15 where I'm at. I'm concerned. And I think I'm entitled to
16 figure out what's going on.

17 THE COURT: Okay.

18 MR. AURZADA: We're ready to recall Mr. Loya.

19 THE COURT: Okay. Mr. Patterson, I'm going to
20 reserve any comments until -- I'm going to give it some
21 thought, but I appreciate the comment. And thank you for -
22 - I appreciate you doing it outside. I think it was the
23 appropriate thing to do. Yes, Mr. -- counsel?

24 (Court confers with Clerk)

25 THE COURT: Mr. Aurzada, if you're -- are you

1 going to need me to transfer the -- are you going to show
2 any documents this -- just in terms of the technology, what
3 do you want me to do?

4 MR. AURZADA: I'm going to use one document. And
5 if you could give control to Mr. Gross.

6 THE COURT: Mr. Gross.

7 MR. AURZADA: Ms. Meta (phonetic) is not here
8 today.

9 THE COURT: No worries. Okay.

10 MS. GOOTT: (Indiscernible - 2:24:43).

11 MR. AURZADA: Your Honor, that's Mr. Michael
12 Burnack (phonetic). He's my partner from the Houston
13 office.

14 THE COURT: Yeah. Welcome.

15 MR. BURNACK: Thank you, Your Honor.

16 THE COURT: Mr. Gross, just before we get
17 started, let me see if -- I'm going to -- Mr. Gross, were
18 you able to -- I think we're okay. Can you confirm? Just
19 give me a thumbs up or something. Okay. Okay. Okay.
20 Thank you. We're back on the record.

21 (Witness entered the courtroom)

22 REDIRECT EXAMINATION

23 BY MR. AURZADA:

24 Q. Mr. Loya, you were asked some questions on cross-
25 examination about the notion of a loan versus a financing.

1 Do you remember those questions?

2 A. Yes.

3 Q. Can you explain to the Court what you mean by a loan?

4 A. A loan is what -- in my mind is a bank that enters
5 into a loan agreement with a customer, client, in which
6 they agree to a certain amount of money that they're going
7 to transfer to a client, and with a promise to pay back a
8 schedule of when it's going to be paid back, interest
9 rates, all of that. Basically, a formal lending of money.

10 Q. Did Vitol make that kind of loan to Mr. Brass?

11 A. No.

12 Q. Did Vitol make that kind of loan to GCAC?

13 A. No.

14 Q. Now, you described another word called a financing.

15 Do you remember that?

16 A. Yes.

17 Q. Can you describe for the Court what you mean when you
18 say financing?

19 A. When you provide financing, basically is you are
20 providing a -- agreeing to basically provide the money --
21 pay for the cost or acquiring of making a transaction
22 possible. And that usually requires paying for the
23 inventory, whether it's a single product, or various
24 products are being blended, paying for the storage of that
25 inventory, paying for the transportation, delivery of that,

1 and the losses and everything that goes with a normal
2 transaction. You are providing the funds to execute that
3 transaction. That's what I see by financing. That's a
4 business that Vitol did often.

5 MS. GOOTT: (Indiscernible - 2:27:40).

6 THE COURT: Sustained.

7 BY MR. AURZADA:

8 Q. Mr. Loya, does Vitol provide financing?

9 A. Yes, it does.

10 Q. Through what types of clients.

11 A. Usually clients that don't have the financial
12 wherewithal to do those trades itself.

13 Q. Was GCAC one such party?

14 A. Yes.

15 MS. GOOTT: (Indiscernible - 2:27:59).

16 THE COURT: Sustained.

17 BY MR. AURZADA:

18 Q. Did Vitol finance GCAC?

19 A. Yes.

20 Q. Can you describe that for the Court and how it was
21 done?

22 A. Basically, Vitol provided the finance, the funds to --
23 Vitol would purchase under its name, purchase various
24 components, put them in storage, storage that Vitol
25 controlled, and paid for transportation, getting it there

1 and getting it to the client. And all of the steps that
2 were required to be done.

3 Q. Now, in that financing to GCAC, did Vitol perform all
4 of its obligations?

5 A. Yes.

6 Q. Did GCAC?

7 A. No. They never paid back the money that was --

8 MS. GOOTT: (Indiscernible - 2:29:00).

9 THE COURT: I'm going to give you a little bit of
10 leeway, but I'm going to start to quote Mr. Patterson on
11 the sidebar. But the objection is sustained.

12 BY MR. AURZADA:

13 Q. Did GCAC perform its obligations under the financing
14 with Vitol?

15 MS. GOOTT: (Indiscernible - 2:29:26).

16 MR. AURZADA: Your Honor, he just testified that
17 there was a financing, so I'm asking -- I asked him if
18 Vitol performed its obligations. And now I'm just asking
19 did GCAC perform its.

20 MS. GOOTT: (Indiscernible - 2:29:40).

21 THE COURT: Overruled. You can answer the
22 question.

23 THE WITNESS: No. GCAC did not live up to their
24 end of the bargain.

25 BY MR. AURZADA:

1 Q. On cross-examination, you mentioned security and
2 financing transactions --

3 MS. GOOTT: (Indiscernible - 2:30:13).

4 THE COURT: Patterson did the same thing, so I'm
5 going to give him a little leeway. Go ahead. Ask the
6 question.

7 MS. GOOTT: (Indiscernible - 2:30:26).

8 THE COURT: I understand.

9 MS. GOOTT: (Indiscernible - 2:30:31).

10 THE COURT: Overruled. I understand.

11 BY MR. AURZADA:

12 Q. What security did Vitol hold when doing business with
13 GCAC?

14 MS. GOOTT: (Indiscernible - 2:30:42).

15 THE COURT: Overruled.

16 THE WITNESS: Vitol maintained control of the
17 product.

18 Q. Can you tell the Court what that product was, just so
19 the Court clearly knows?

20 A. It was asphalt, or components of asphalt. They're
21 blended together to make asphalt. They also make fuel oil.
22 It's -- those being similar products.

23 Q. And how was it held? What did Vitol do to hold it?

24 A. It was in --

25 MS. GOOTT: Objection. (Indiscernible -

1 2:31:12) .

2 THE COURT: Overruled.

3 THE WITNESS: They held the product in there --

4 under the control in their -- under their (indiscernible -

5 2:31:26) they control.

6 BY MR. AURZADA:

7 Q. Now, at some point, did Vitol release its security?

8 A. Yes.

9 Q. Describe for the Court exactly how that happened?

10 A. That -- what GCAC would have to post some security,
11 whether it be pre-payment, or something that basically
12 would be value, would allow Vitol to then take that and
13 release the product.

14 Q. And did that happen here?

15 A. It happened at the beginning. It didn't happen
16 towards the end.

17 Q. And what does Vitol expect when it releases product to
18 a party it is financing?

19 A. We expect them to pay for that product.

20 Q. Would Vitol ever release product as a gift?

21 A. No.

22 Q. Did Vitol release product to GCAC?

23 A. Did Vitol release product to GCAC? They did.

24 Q. Did it expect to be repaid?

25 A. Yes, of course.

1 Q. Let me ask you a little bit about -- sorry
2 (indiscernible - 2:32:42). Is Vitol a logistics company?

3 MS. GOOTT: (Indiscernible - 2:32:48).

4 THE COURT: Sustained.

5 Q. What is Vitol's business?

6 A. It's a trading company. It's a trading company, and
7 all the ramifications that trading encompasses.

8 Q. In the commodities industry, is there a difference
9 between a broker and a trader?

10 A. Yes.

11 Q. Can you explain the differences to the Court?

12 MS. GOOTT: (Indiscernible - 2:33:16).

13 THE COURT: What's your response, counsel?

14 MR. AURZADA: I'm asking his understanding of the
15 difference.

16 MS. GOOTT: (Indiscernible - 2:33:27).

17 THE COURT: What's your response, counsel?

18 MR. AURZADA: Your Honor, they've made hours and
19 hours of -- I'm having a hard time answering this. I do
20 not want to coach the witness is what I'm saying. I'm
21 trying to get to the capacity in which Vitol acted for
22 GCAC, whether it was a broker or a trader, because those
23 words were both used on direct. And I think it's important
24 that the Court hear those.

25 THE COURT: Why don't you go down that road.

1 BY MR. AURZADA:

2 Q. Okay. Did Vitol act as a broker or trader in
3 connection with GCAC?

4 MS. GOOTT: (Indiscernible - 2:34:11).

5 THE COURT: Overruled.

6 THE WITNESS: Vitol acted as a trader.

7 BY MR. AURZADA:

8 Q. Okay. Why was that important to Vitol?

9 A. That's what its business is, what it does.

10 Q. How many traders worker at Vitol in 2017?

11 A. I don't know the exact number. I would estimate
12 something around -- worldwide or Vitol Inc.?

13 Q. Vitol Inc. in Houston.

14 A. I don't know exactly the number, but I would say it's
15 around 70.

16 Q. Did you know the details of all the transactions your
17 traders were working on?

18 A. No.

19 Q. Why not?

20 A. It's just too many. That's not my role. My role is
21 basically get involved --

22 MS. GOOTT: Objection. (Indiscernible -
23 2:34:57).

24 THE COURT: Sustained.

25 BY MR. AURZADA:

1 Q. Was it your job to know the details of every
2 transaction the traders were working on?

3 A. No.

4 MS. GOOTT: (Indiscernible - 2:35:10).

5 THE COURT: Overruled. Overruled. He can
6 answer.

7 Q. Would it have been possible for you to do that?

8 THE COURT: Well, I don't know what question
9 you're asking. I overruled the objection and then you
10 asked another one.

11 BY MR. AURZADA:

12 Q. Would it have been possible, Mr. Loya -- I'm going to
13 start again, Your Honor, if that's okay. Mr. Loya, would
14 it have been impossible -- would it have been possible for
15 you to be involved in every trade that was done by your
16 traders?

17 MS. GOOTT: (Indiscernible - 2:35:34).

18 THE COURT: He can testify to the extent he
19 knows.

20 THE WITNESS: No. I know that it would be
21 impossible. It is too many of them.

22 Q. How many would there be?

23 MS. GOOTT: (Indiscernible - 2:35:47).

24 THE COURT: Yeah. That's vague. One what day,
25 what time, what period of time, what year. I think that is

1 vague.

2 Q. In August of 2017, how many trades would the Vitol
3 traders do in one day?

4 A. It would --

5 MS. GOOTT: (Indiscernible - 2:36:09).

6 THE COURT: Counsel?

7 MR. AURZADA: Your Honor, he just testified there
8 was approximately 70.

9 THE COURT: All right. Overruled. He can
10 answer.

11 THE WITNESS: I can answer?

12 THE COURT: Uh-huh.

13 THE WITNESS: It ranged, depending on how busy a
14 day was. It ranged from -- it could be in -- and I'm
15 thinking about all transactions, it could be over 100 in a
16 busy day.

17 BY MR. AURZADA:

18 Q. Can you describe for the Court the difference between
19 a joint venture that Vitol would do and a financing?

20 A. Yes.

21 Q. Would you please?

22 MS. GOOTT: (Indiscernible - 2:37:15).

23 THE COURT: Overruled.

24 THE WITNESS: A joint venture would be one where
25 -- we had two types of joint ventures. We had ones where

1 it would be a pure -- a single transaction, where it would
2 be a joint venture with another counterparty, and maybe
3 delivering a cargo or something like that. And there were
4 joint ventures in which were longer -- for a period of
5 time, that would cover several transactions, many
6 transactions. And I'm sorry, I forgot the exact question.

7 BY MR. AURZADA:

8 Q. How would that compare to a financing.

9 MS. GOOTT: (Indiscernible - 2:37:55).

10 THE WITNESS: And a financing would be providing
11 the funds in order to allow the person that Vitol decided
12 to finance, allow them to do a trade. Enable, not allow.
13 Enable to be exact.

14 BY MR. AURZADA:

15 Q. Are joint ventures more complicated or less
16 complicated than a financing?

17 MS. GOOTT: Objection. (Indiscernible -
18 2:38:22).

19 THE COURT: I think he can cross him on it. I
20 think if he's the CEO of Vitol Inc., he knows what a
21 financing sounds like, as he defined it. And he can talk
22 about whether believes a J.V. is more or less complicated.
23 I think you can pick him up on cross on that. Overruled.

24 THE WITNESS: On -- in referring to a single
25 J.V., they're probably about the same. If it's a long-term

1 J.V., it's far more complicated than a financing.

2 Q. Please tell the Court what those complications are.

3 A. Well, it has to be first is how we're going to
4 allocate the different responsibilities to the parties.

5 Who's going to do what? How is it going to be financed?

6 Where's it going to be stored? Who's going to cover those

7 costs? How are they going to be split up? Who's going to
8 make the decision of what market to approach, who

9 approaches that market? How is that -- who is going to

10 determine the -- make the decision of pricing, for example,

11 or other decisions. How we're going to transport it there?

12 Can we meet the time schedule? And how is it going to be

13 supplied, if it's more than one area that the joint venture

14 partners are operating from? How are the profits or losses

15 going to be split? How will the activities be hedged? Who

16 will hedge them? Who will provide the financing for the

17 hedges? Who's going to be the clearing house? Under whose

18 name is it going to be? How is that going to be allocated

19 later on. How do we terminate the joint venture? How do

20 we liquidate inventory that may be in tankage at the time

21 the joint venture expires. It's a lot of questions.

22 That's why it would have to be put together, everything

23 agreed, and then at that point reviewed.

24 Q. Were all of those items you just described agreed upon
25 between Vitol and GCAC?

1 A. They were not?

2 Q. Is there a different level of communication that is
3 required between the parties to a financing with Vitol and
4 the parties to a joint venture?

5 A. What -- clearly a joint venture, again, one that
6 extends beyond one transaction is far more complicated and
7 will require a lot more communication and would take a lot
8 more time. Financing, there's some details to be agreed,
9 but it's far simpler.

10 Q. Does it require more or less documentation to do a
11 joint venture or a financing?

12 MS. GOOTT: (Indiscernible - 2:41:28).

13 THE COURT: I also think it's vague too. What
14 financing? I don't even -- I think you can ask another
15 question.

16 MR. AURZADA: Sure. Thank you, Your Honor. I'll
17 rephrase.

18 BY MR. AURZADA:

19 Q. When Vitol provides financing, how are the
20 transactions communicated by the counter-party to that
21 financing?

22 MS. GOOTT: (Indiscernible - 2:42:06).

23 THE COURT: I think everybody's going to have to
24 -- I'm telling you. I'm going to either open it wide open
25 and everybody's going to get sidebar, or no one's going to

1 get it. But y'all are going to have to figure out.

2 MS. GOOTT: (Indiscernible - 2:42:19).

3 THE COURT: I'm just saying, just everybody
4 choose. I don't want to do it, but your objection is
5 valid. Sustained.

6 MS. GOOTT: (Indiscernible - 2:42:31).

7 THE COURT: No, no, no, as long as --

8 MS. GOOTT: (Indiscernible - 2:42:35).

9 THE COURT: As long as the other side gets to do
10 it too, I'm fine with it.

11 MS. GOOTT: (Indiscernible - 2:42:41).

12 BY MR. AURZADA:

13 Q. Mr. Loya, when doing a financing in 2017, how did
14 Vitol communicate with its counterparties?

15 MS. GOOTT: (Indiscernible - 2:43:00).

16 THE COURT: Can you repeat the question.

17 MR. AURZADA: Yeah. I'm going to try to do it
18 word for word.

19 THE COURT: Okay.

20 Q. In 2017, when Vitol was providing financing to its
21 customers, how did it communicate with the customers?

22 MS. GOOTT: (Indiscernible - 2:43:18).

23 THE COURT: I think relevance is covered. Maybe
24 you can answer the question to the extent you know.

25 THE WITNESS: It would be a financing

1 transaction. First, it would be led by the trader. The
2 trader would then introduce that to the finance group, the
3 finance group under which credit operated, and incident,
4 the finance would report it to me. Is that -- then the
5 finance group would assess the risk of the client, based on
6 his credit worthiness, determine what security would be
7 required for that. And that would be done by the credit
8 department.

9 And then the finance board would give their
10 result of their analysis to the trader. The trader would
11 communicate that to the client. And that's how it was
12 done.

13 BY MR. AURZADA:

14 Q. Does Vitol use the word position in a specific way
15 when discussing its business?

16 A. Well, a position for Vitol is basically --

17 MS. GOOTT: (Indiscernible - 2:44:49).

18 THE COURT: Overruled.

19 THE WITNESS: A position to Vitol is where
20 basically it refers to a trade and our stand -- it could
21 refer to many things. It could refer to a trade. It can
22 refer to an outstanding risk, be it a hedge that is
23 outstanding. Or it could refer to a financing that's
24 ongoing, that hasn't been -- but it usually refers to a
25 business in which a transaction in which they're involved

1 in, and where they are physically. And physically, I mean
2 is where their products, what -- how much product, where it
3 is. That's the position.

4 BY MR. AURZADA:

5 Q. So if you are asked -- well, I'm going to ask you now.
6 Did Vitol take Rio's position when it began doing business
7 with GCAC?

8 A. I don't know the details of what Vitol took from Rio.

9 Q. Did Vitol ever agree to share profits with GCAC?

10 A. No.

11 Q. Did Vitol ever agree to share profits with Mr. Brass?

12 A. No.

13 Q. Did Vitol ever agree to share losses with GCAC?

14 A. No.

15 Q. Did Vitol ever agree to share losses with Mr. Brass?

16 A. No.

17 Q. Did you ever tell Mr. Brass that you wanted to be in a
18 joint venture with him?

19 A. No.

20 Q. Did you tell him the contrary?

21 A. I told him that we decided not to be in a joint
22 venture with him.

23 Q. Did you approve a partnership with GCAC?

24 MS. GOOTT: (Indiscernible - 2:46:44).

25 THE COURT: Sustained.

1 BY MR. AURZADA:

2 Q. What type of a relationship did you approve with GCAC
3 between GCAC and Vitol?

4 A. Vitol would provide financing to GCAC, and eventually
5 until the end of December. That's it.

6 Q. Did GCAC control its own positions?

7 A. GCAC had their own trades, yes.

8 Q. And what does that mean to you?

9 A. It means they basically had to decide where -- what
10 they were going to sell, how they were going to sell it,
11 how they are going to hedge it, when they're going to hedge
12 it. They were responsible for all of that.

13 Q. Now, if GCAC -- excuse me. If Vitol and GCAC had been
14 in a joint venture, would that be the -- your answer be the
15 same or different?

16 MS. GOOTT: (Indiscernible - 2:47:45).

17 THE COURT: Sustained.

18 Q. Did Mr. Brass control any part of Vitol's business?

19 A. None.

20 Q. Did Vitol control any part of Mr. Brass's business?

21 MS. GOOTT: (Indiscernible - 2:48:05).

22 THE COURT: Overruled.

23 THE WITNESS: No.

24 Q. Is that important?

25 MS. GOOTT: (Indiscernible - 2:48:15).

1 THE COURT: It is vague. I don't know what you
2 mean. I don't know which question you were referring to.
3 You asked two and then you asked a question.

4 MR. AURZADA: Okay. Mr. Gross, can we look at
5 Defendant's Exhibit 13?

6 THE COURT: I thought I did. I apologize.

7 BY MR. AURZADA:

8 Q. Do you recall looking at this email?

9 A. Yes.

10 Q. To your knowledge, has Mr. Brass ever seen this email
11 or any of the emails on here? And if you need to take a
12 look at it, please do.

13 A. I don't see him.

14 Q. Okay. Is Nick Fay a lawyer?

15 A. No.

16 Q. In your experience, does Nick Fay deal with business
17 terms or legal terms?

18 A. Business terms. He's a trader.

19 Q. Would Nick Fay have been involved in the negotiations
20 between Vitol Inc. and GCAC?

21 MS. GOOTT: (Indiscernible - 2:49:43).

22 THE COURT: Sustained as to both.

23 Q. To your knowledge, did Nick Fay negotiate with GCAC
24 directly?

25 MS. GOOTT: (Indiscernible - 2:49:52).

THE COURT: Overruled.

2 THE WITNESS: No. I don't think he did.

3 MR. AURZADA: Your Honor, may I have a moment?

4 THE COURT: Uh-huh.

5 (Pause)

6 MR. AURZADA: No further redirect, Your Honor.

7 THE COURT: Okay.

8 (Pause)

9 THE COURT: Mr. Patterson, before you begin, I've
10 turned it over to the podium, just so you can connect if
11 you need to.

12 MR. PATTERSON: Perfect.

13 THE COURT: Okay.

14 RECROSS-EXAMINATION

15 BY MR. PATTERSON:

16 Q. Mr. Loya, your lawyer on recross and you discussed, I
17 guess, a clarification on your understanding of a loan and
18 financing, right?

19 A. I don't understand the clarification. But we
20 discussed the loan.

21 Q. Right. And I guess we need to clarify it a little bit
22 further. What would you call me giving a business money
23 for their working capital? Is that a loan or is that
24 financing?

25 A. In my vernacular, I would call it financing.

1 Q. You would? So if you gave GCAC \$500,000 as working
2 capital, that's financing?

3 A. Financing. Yeah, financing is very broad.

4 Q. Well, yesterday you weren't. Yesterday you said that
5 was a loan. If you gave another person money, and they
6 promised to pay it back, that was a loan, not financing.

7 Do you remember this conversation we had?

8 A. I do remember that conversation.

9 Q. Yeah. And so do you -- are you having second thoughts
10 about how you explained it to me?

11 A. No. Perhaps I should -- to me, a loan is a subset of
12 finance.

13 Q. Okay. Because yesterday that's not what you said.
14 You would agree with me there, right?

15 A. Well, yeah. I was trying to in my mind describe what
16 is a loan. And to me, I see it more as a formal thing.

17 Q. And so where are we today? Tell me today what you
18 think the difference between a loan and financing is in
19 your mind. Because you're using those words. Your lawyer
20 stood up here, and you're using those words to make a
21 distinction. You understand why it's important, right?

22 MR. AURZADA: Objection. Argumentative, Your
23 Honor.

24 THE COURT: Overruled.

25 BY MR. PATTERSON:

1 Q. You understand why the distinction is important, don't
2 you?

3 A. I understand that I have to give you what I believe is
4 my definition of a loan and what is a finance. The
5 importance is up to you guys.

6 Q. If I said I have a business, Mr. Loya, and I want you
7 to finance my business, what does that mean?

8 MR. AURZADA: Calls for speculation, Your Honor.

9 THE COURT: I'm going to give Mr. Patterson a
10 little bit of leeway here. I think it will help clarify,
11 at least in my mind, the distinction that Mr. Loya is
12 making between a loan and a financing.

13 THE WITNESS: Do you want me to answer?

14 THE COURT: Just a second. Mr. Patterson, that's
15 not an introduction to, you know, offer 15 hypos, but I do
16 think this one is valid.

17 MR. PATTERSON: Okay. Thank you, Your Honor.

18 THE WITNESS: In your hypothetical, I would ask
19 for more detail.

20 BY MR. PATTERSON:

21 Q. All right.

22 A. Financing is very encompassing.

23 Q. Okay. What's the question? What detail do you want
24 to know what to call -- you'd call that financing?

25 A. No, you asked me what I'd do if you asked me that, and

1 I said I want more detail regarding what you needed.

2 Q. And I said what would you call that, financing or a
3 loan?

4 A. I would need more detail to know what it is that you
5 need. You asked --

6 Q. What do you need to know? What do you need to know to
7 make the distinction?

8 A. I need -- what are you asking for? What do you want
9 me to pay for? What is it you want/

10 Q. Money. Working capital. You understand what working
11 capital is, don't you?

12 A. You want a loan from me. You want to borrow money.

13 Q. Yeah.

14 A. That I give you money. We sign an agreement that says
15 I lend you so much, you pay me this interest rate, and this
16 is what you have to pay me back at --

17 Q. Okay.

18 A. But that would be a loan.

19 Q. Okay. You agree to finance someone's operations,
20 that's a loan, right?

21 A. No. It's a financing their operation.

22 Q. What's the difference of that and what I just asked
23 you, the hypothetical?

24 A. In my mind, a loan is a formal document. You say here
25 it is. I'm going to lend you money for a certain tenor,

1 certain interest rate. This is how you've got to pay me,
2 and here's what happens if you don't pay me. In financing,
3 you're asking me to -- can you finance my inventory, for
4 example. Can you buy for me? Can you hold it? What
5 security you need, etcetera. To me it's broader, more
6 complex.

7 Q. Why would you describe what you did as financing
8 GCAC's operations? Is that what you did?

9 A. That's what we did.

10 Q. You did? You loaned them the money to operate?

11 A. No. You said why did we call it financing, because we
12 financed its operations.

13 Q. How? How without giving them money? How did you do
14 that?

15 A. We bought the inventory.

16 Q. Who bought the inventory?

17 A. Vitol bought the inventory. It was sitting --

18 Q. Right. Vitol bought the inventory, right? In Vitol's
19 name, right?

20 A. On behalf of GCAC.

21 Q. Hold on. We'll get there. One step at a time. You,
22 Vitol, bought inventory, step one, right?

23 A. Yes.

24 Q. Now, you say now today, five years later, oh, we did
25 that on behalf of GCAC. Right? Today, five years later,

1 you sit here and you want us to believe that was done on
2 behalf of someone, right?

3 A. No, I'm telling you what it was then.

4 Q. I know you are. What do you have? What did you bring
5 in the hundreds of thousands of pages that you dumped in
6 this case, where is the piece of paper that says that?

7 MR. AURZADA: Objection. Argumentative.

8 THE COURT: Sustained.

9 BY MR. PATTERSON:

10 Q. Did you bring it today?

11 A. Bring what?

12 Q. That piece of paper.

13 MR. AURZADA: Objection. Argumentative.

14 THE COURT: Sustained.

15 Q. Do you have -- does Vitol have anything that reflects
16 that statement right there?

17 MR. AURZADA: Objection. Argumentative.

18 THE COURT: Overruled.

19 THE WITNESS: What statement?

20 Q. The statement that what you bought Vitol was on behalf
21 of GCAC?

22 A. That was the understanding from the very beginning.

23 Q. No. Do you have anything that says that?

24 A. No.

25 Q. Do you have an email that says that?

1 A. I don't know. I don't know of all the emails that are

2 --

3 Q. Right.

4 A. -- in existence.

5 Q. You've never seen it, right?

6 A. I don't know. I don't think so. No.

7 Q. No? Well, have you? If you did, you would remember,
8 right?

9 A. I would.

10 Q. Right. So you don't remember. You've never seen it.

11 A. I don't remember seeing one.

12 Q. No one brought you a piece of paper that says these
13 trades are really on behalf of GCAC, although Vitol's
14 putting their name on it, right?

15 A. No, that's when we operated from the very beginning.

16 Q. Whatever excuse doesn't matter. There's -- the
17 paperwork, the trades are all in Vitol's name. Isn't that
18 true, Mr. Loya?

19 A. That was the financing.

20 Q. Isn't that true, yes or no?

21 A. Yes.

22 Q. All right. And it's also true that only now, with no
23 substantiation, are you saying that was on behalf of
24 someone else.

25 MR. AURZADA: Argumentative.

1 THE COURT: Sustained.

2 MR. AURZADA: And he's mischaracterizing his
3 testimony.

4 THE COURT: I think we all got the point.

5 BY MR. PATTERSON:

6 Q. All right. What else did you do to finance? The
7 trades were all Vitol's trades. What else did you do that
8 you say was financing?

9 A. We provided storage, paid for the storage.

10 Q. Okay. And that storage was done in whose name?

11 A. Vitol's.

12 Q. Vitol, right. Do you have one piece of paper that
13 says you did it for somebody else?

14 A. No.

15 Q. Do you have one email that said this is really for
16 GCAC. This is really for Mr. Brass. One piece of paper.
17 One email.

18 A. We didn't need one.

19 Q. I know you don't think you needed one. I'm asking you
20 if one exists.

21 A. I don't know of one.

22 Q. Have you seen it?

23 A. If I don't know of one, I can't see it.

24 Q. I know. That's why I'm asking you. You want to hedge
25 your answers. I want a direct answer.

1 A. No, I'm answering your question. You asked me that
2 question again and again.

3 Q. I want a direct answer. Yes or no.

4 MR. AURZADA: Argumentative, Your Honor.

5 THE COURT: Sustained. I think he's answered the
6 question.

7 BY MR. PATTERSON:

8 Q. What else did you do that you think is financing?

9 A. Paid for transportation.

10 Q. All right. In whose name did you pay or incur that
11 debt for transportation?

12 A. Vitol.

13 Q. All right. And now five years later, you show up here
14 and you want to say, oh that's really for GCAC?

15 MR. AURZADA: Argumentative.

16 THE COURT: Sustained.

17 Q. Is that your testimony today that you want the Court
18 to believe it was done on behalf of GCAC?

19 MR. AURZADA: Argumentative, Your Honor.

20 THE COURT: Overruled. He can answer that one.

21 THE WITNESS: The Court can make its own mind,
22 but the truth is that we -- it was done on behalf of GCAC>

23 BY MR. PATTERSON:

24 Q. Right. I know that's what you believe. Is there one
25 piece of paper that substantiates that?

1 MR. AURZADA: Objection. Asked and answered.

2 THE COURT: Sustained.

3 MR. PATTERSON: No, this is transportation.

4 We've done hedging, trades, and we've done storage. We
5 haven't done transportation.

6 THE COURT: I think he answered that there wasn't
7 a piece of paper to justify it, but maybe he can clarify.

8 BY MR. PATTERSON:

9 Q. Is there one that says you did it on behalf of GCAC?

10 A. None that I know of.

11 Q. One email?

12 A. Not that I know of.

13 Q. It doesn't exist, does it?

14 A. I don't know.

15 Q. What else did you do on this financing arrangement
16 that you say?

17 A. We released the product -- we sold the product to
18 GCAC, and we released it to them when we had security
19 provided by GCAC.

20 Q. So your testimony today is that you sold product to
21 GCAC. Is that what you're saying?

22 A. We released it for them to sell.

23 Q. Listen to my question. Did you sell product to GCAC?

24 A. We released -- they had the buyer. We would release -

25 -

1 Q. That's not my question. Listen to my question. You
2 ran the largest private trading company in the world and
3 I'm asking you a very simple trading question.

4 MR. AURZADA: Argumentative, Your Honor.

5 BY MR. PATTERSON:

6 Q. Did you sell --

7 THE COURT: Sustained.

8 BY MR. PATTERSON:

9 Q. Did you sell any product directly to GCAC?

10 MR. AURZADA: Object as argumentative.

11 THE COURT: Overruled.

12 THE WITNESS: We delivered product to GCAC. I
13 don't know how -- what the agreement was. How that was.
14 The corporate way it was handled.

15 MR. PATTERSON: Okay. Let me --

16 THE COURT: Let me ask the question, Mr.
17 Patterson. Are you aware of any sale, transaction, between
18 Vitol Inc. and GCAC?

19 THE WITNESS: Are you asking me?

20 THE COURT: Yes, sir.

21 THE WITNESS: No, I'm not, Your Honor. I don't
22 know.

23 THE COURT: Are you aware of any sale transaction
24 between Vitol and Mr. Brass?

25 THE WITNESS: No.

1 THE COURT: Thank you.

2 BY MR. PATTERSON:

3 Q. Anything else that supports this financing arrangement
4 you say you had with Mr. Brass and/or GCAC?

5 MR. AURZADA: Objection. Vague.

6 THE COURT: I'm going to overrule that. I think
7 he can answer.

8 THE WITNESS: Yes, I mean, they paid for the
9 product. When it was released to them, they would pay for
10 it.

11 Q. Okay. But you just testified under oath they never
12 bought any product.

13 A. No. It was released to them I just said, on their
14 behalf.

15 Q. I don't know what that means, but did you ever sell --
16 were they ever obligated to buy anything from you? Vitol?

17 A. Do I understand that we were doing what we were doing,
18 we were putting it together for them to sell. We were
19 providing that facility. That -- an all-encompassing
20 facility. Basically, (indiscernible - 3:05:31) for them to
21 sell. And they would have to provide security when they
22 took it from us, and they would have to pay for it.

23 Q. So it was a bigger arrangement? Is that what you're
24 saying? Kind of like a joint venture?

25 A. No, it was support -- it was financing for the

1 trading.

2 Q. But you just said they didn't trade. You traded.

3 A. No, we didn't trade.

4 Q. Vitol.

5 A. We did not take price risk. We did not take -- we did
6 not hedge it. We hedged -- they hedged the product under
7 their instructions for them. They were --

8 Q. You're saying that now, but we're --

9 MR. AURZADA: Your Honor, he's interrupting the
10 witness.

11 THE COURT: Yeah. I think that's right. Why
12 don't we just let him answer or strike it.

13 BY MR. PATTERSON:

14 Q. Explain it.

15 A. Vitol provided the facilities, the money, the storage,
16 the transportation, paid for it in order to release product
17 for GCAC to sell, of which they had to pay for it.

18 THE COURT: Can I ask you a question? When you
19 say that you release the -- Vitol would release product
20 once it obtained security, what do you mean by that? The
21 obtaining of the security?

22 THE WITNESS: Well, basically, Your Honor, the
23 product is in tank. If they come to pick it up, we would
24 not release the -- as long as you're holding it, you feel
25 secure.

1 THE COURT: I understand that.

2 THE WITNESS: You have security.

3 THE COURT: But you're saying obtain security.

4 You would release the product --

5 THE WITNESS: They would have to post --

6 THE COURT: -- if you obtained security --

7 THE WITNESS: It would be a letter of credit. It
8 would be some value that would equal the --

9 THE COURT: That's why I'm trying to understand.

10 So in this transaction, was there any such obtaining of the
11 security in the form of a letter of credit or some other
12 form of security?

13 THE WITNESS: It was -- at the beginning, yes.

14 They would post security.

15 THE COURT: I'm asking you when the product was
16 released.

17 THE WITNESS: Yes. They would have to post
18 security in order for a product to be released.

19 THE COURT: Did that happen in this case?

20 THE WITNESS: And that was what -- it happened
21 throughout the first -- the front end of the case. The
22 mistake was when Vitol stopped, or the trader stopped
23 waiting for security to be posted and released it without
24 security.

25 THE COURT: So is it fair to characterize it --

1 is it fair to say that at some point between the
2 relationship between GCAC and Vitol, there was a posting of
3 security and at some point, there was no posting of
4 security?

5 THE WITNESS: Yes. Several months in the
6 beginning, they was posting a security. And then it
7 stopped.

8 THE COURT: And Mr. Kuo would be the person to
9 know when that stopped?

10 THE WITNESS: Yes. He would have all the details
11 for that. He's the one who would --

12 THE COURT: Okay. I apologize, Mr. Patterson. I
13 just -- the obtaining security part, I was just a little --
14 I needed the clarification in my mind to understand the way
15 the transaction worked.

16 BY MR. PATTERSON:

17 Q. And what was that security that was posted?

18 A. I don't know in detail.

19 Q. You don't know? You just testified under oath that
20 you knew there was security. What was it?

21 MR. AURZADA: Argumentative, Your Honor.

22 THE COURT: Overruled.

23 THE WITNESS: I don't know what form it took. I
24 was informed we had secured transactions when we were doing
25 it, and that was good enough for me. I did not get into

1 the details.

2 BY MR. PATTERSON:

3 Q. Informed by -- from whom?

4 A. By Eric.

5 Q. And did you not say what was the security?

6 A. No.

7 Q. Do you have a standard form of security?

8 A. No. But then it would be whatever the -- was
9 acceptable to finance. Usually, it would be a letter of
10 credit. It could be a pre-payment.

11 THE COURT: Are you aware of any documents that
12 can justify any form of security that you're describing?

13 THE WITNESS: Any document that would serve as
14 security, Your Honor?

15 THE COURT: No. Anything that kind of provides
16 evidence that any such security at any point existed.

17 THE WITNESS: Yes. It would have been -- there
18 would be documents of what they posted for security.

19 THE COURT: So to the extent that they existed,
20 there would be some document within Vitol --

21 THE WITNESS: There would be -- yes. In the --

22 THE COURT: Okay.

23 THE WITNESS: -- finance department.

24 THE COURT: Thank you.

25 BY MR. PATTERSON:

1 Q. Such security would be easy to access, even today,
2 right? If -- I'm sorry. Go ahead.

3 A. Access by whom?

4 Q. Vitol.

5 A. I don't understand the question.

6 Q. If you were sitting in your office at Vitol, and I
7 said, Mr. Loya, show me the security posted by GCAC for
8 these trades -- these alleged trades. You could pick up
9 the phone. How long would it take to get you a copy of
10 whatever it was?

11 A. I would -- I don't know how long it would take the
12 finance department. I would think probably fairly quickly.

13 Q. Fairly quickly, right? Do you have any idea why no
14 such document was ever produced in this case?

15 MR. AURZADA: Objection, Your Honor. I think
16 that mischaracterizes the facts.

17 MR. PATTERSON: Let's see it. We'll be informal
18 right here. Let's see it.

19 THE COURT: I think we can ask questions. But I
20 understand your point, if you wish to make the request.
21 But I don't -- to the extent the witness may or may not
22 know whether something was produced or not, I'm not sure
23 he's going to be in a position to answer the question.

24 MR. PATTERSON: Well, not only that, but we asked
25 for such things in discovery. They didn't produce it. And

1 I'm going to ask the Court to strike the testimony because
2 it's not admissible unless they produced it. They can't
3 talk about something they in essence told us doesn't exist,
4 and then show up in Court and go, oh, it does exist, right?

5 THE COURT: It also goes to the weight. Right?

6 MR. PATTERSON: Well, it does and it doesn't. I
7 can't attack the weight unless I prove to you they didn't
8 produce it. We asked for it, and it wasn't produced, and
9 I'm happy to go informal here, and let the lawyers.
10 They're good at explaining to you. But it didn't -- it
11 doesn't exist as far as discovery in the hundreds of
12 thousands of pages that were dumped on us in this case, it
13 doesn't exist.

14 THE COURT: Why don't you just keep asking the
15 witness questions, and we'll see where it goes.

16 MR. PATTERSON: All right.

17 BY MR. PATTERSON:

18 Q. And in fact, since you don't know, Mr. Loya, it's
19 possible and probable that there is no such security, isn't
20 there?

21 MR. AURZADA: Objection. Argumentative.

22 THE COURT: Sustained.

23 BY MR. PATTERSON:

24 Q. It's possible that there is no such security, isn't
25 there, Mr. Loya?

1 A. I would say highly unlikely.

2 Q. Possible.

3 A. I don't think my guys would be lying to you.

4 Q. Well, we talked about yesterday, Mr. Kuo lied to you.

5 Right?

6 MR. AURZADA: Objection, Your Honor. That
7 mischaracterizes the testimony entirely.

8 THE COURT: Sustained.

9 MR. PATTERSON: Judge, it does not. He said he
10 was misled by Mr. Kuo in the dealings with GCAC. He was
11 walking through the trading floor, and he heard him
12 talking. And that's the first he heard. That's exactly
13 what he said.

14 THE COURT: I think there's a difference between
15 misleading and lying. I see one.

16 BY MR. PATTERSON:

17 Q. You were misled by our traders.

18 MR. AURZADA: Objection, Your Honor. That wasn't
19 the testimony yesterday either.

20 THE COURT: I think I've got what I need if
21 anybody's interested in what the judge thinks.

22 MS. GOOTT: That's all that matters.

23 BY MR. PATTERSON:

24 Q. Could there have been another mistake on this file?

25 A. Another from which one?

1 Q. Another one from Mr. Kuo's? No security.

2 A. No, that was a mistake when he failed to ask for
3 security later on during that transaction.

4 Q. Right. So maybe there never was any security.

5 A. There was.

6 Q. How do you know?

7 A. I believe him.

8 Q. You believe who?

9 A. I believe him and we discussed it, I think -- no, in
10 fact, I know that we discussed it when this came up. All -
11 - they discovered all this in February or March of the
12 following year that we were -- we went through finance and
13 all that, and what mistakes were made, and we discussed
14 when they were getting security and then when they stopped
15 getting security.

16 Q. So now you remember the discussion you had when you
17 were investigating, because yesterday we talked, you didn't
18 have any details. You just said you looked into it, right?

19 MR. AURZADA: Objection, Your Honor. It's --

20 BY MR. PATTERSON:

21 Q. But now you specifically remember?

22 A. No. I don't think --

23 MR. AURZADA: Compound and argumentative.

24 THE COURT: Sustained. I've got what I need, Mr.
25 Patterson.

1 BY MR. PATTERSON:

2 Q. But the security doesn't really matter because GCAC
3 never made a trade; isn't that true, Mr. Loya?

4 MR. AURZADA: Argumentative.

5 THE COURT: Overruled.

6 THE WITNESS: No. That's not the case at all.

7 Q. Do you have evidence that GCAC made a trade with
8 Vitol?

9 MR. AURZADA: Argumentative, Your Honor. He's
10 already testified about this.

11 THE COURT: That's not argumentative, though.
12 Overruled.

13 THE WITNESS: Basically, the evidence is that we
14 only release product to them to sell in exchange for
15 security. And later on, we failed to get security when we
16 released product.

17 BY MR. PATTERSON:

18 Q. Okay. I asked you about a trade. I didn't ask you
19 about buying any product from Vitol. We'll get there.
20 Well, I have, but I -- that wasn't my specific question.
21 My specific question was GCAC never made a trade with
22 Vitol. You never made a trade on behalf of Vitol; is that
23 correct? You never made a trade on behalf of GCAC.

24 A. The arrangement was in providing finance to enable
25 GCAC to do the trades.

1 Q. Every single -- you testified yesterday that you
2 believe Mr. Brass and/or GCAC owed Vitol \$10 million,
3 right?

4 A. Yes.

5 Q. All right. Let's break it down. All right. What's
6 the first big piece of that \$10 million?

7 MR. AURZADA: Your Honor, I would argue that this
8 is outside the scope of the redirect.

9 THE COURT: I haven't heard the question yet.
10 Your right to reserve, I just haven't heard the question.

11 BY MR. PATTERSON:

12 Q. \$10 million, right? That's what you said.

13 A. Yes.

14 Q. Okay. What's the comprised of in general terms?

15 MR. AURZADA: Your Honor, I object. This -- he's
16 asking what he testified about yesterday, which means it's
17 got to be outside the scope of the redirect.

18 THE COURT: I'll sustain that.

19 MR. PATTERSON: Judge, he testified that he was -
20 -

21 THE COURT: He was not asked about -- on
22 redirect, you asked -- you got to ask about the 10 million
23 before as is shown up there. He was not asked those
24 questions. He was asked the difference between financings
25 and loans, and what he believed about those two, and he was

1 shown an email.

2 BY MR. PATTERSON:

3 Q. Is there anything owed to Vitol for activity other
4 than financing?

5 A. The hedges fall under the financing.

6 Q. I'm sorry?

7 A. The hedges fall under the financing.

8 Q. The hedges?

9 A. Fall under the financing.

10 Q. Well, is he liable for hedges or financing? I mean,
11 you understand it can't be both, right?

12 MR. AURZADA: Argumentative, Your Honor.

13 THE COURT: Sustained.

14 Q. Is it hedging or financing?

15 A. What is?

16 Q. I'm sorry?

17 A. What is?

18 Q. The debt.

19 A. The source of the debt --

20 Q. Yes.

21 A. -- product for \$10 million and hedging losses of about
22 \$5 million.

23 Q. Okay. Because earlier you said it was financing. But
24 now it's for product and hedging?

25 A. No, the financing covered --

1 MR. AURZADA: No, that mischaracterized the
2 testimony. He went all the way through that.

3 THE COURT: Sustained. Sustained.

4 BY MR. PATTERSON:

5 Q. Does he owe money for hedging transactions or for
6 financing?

7 A. Financing is for the losses in hedging and for the
8 product given to you.

9 Q. Okay. Not financing.

10 A. No, financing is what enabled that to happen.

11 MR. AURZADA: Your Honor, we've been through this
12 a whole bunch. I think the Court is clear on it, and it --

13 THE COURT: I tend to agree.

14 MR. AURZADA: And it has been asked and answered.

15 THE COURT: I tend do agree.

16 MR. PATTERSON: Well, quite frankly, I wish
17 someone would explain it to me because he can't even tell
18 us what the basis of the debt is, Judge. Is it -- for
19 example --

20 THE COURT: His testimony --

21 MR. PATTERSON: -- is it a hedging transaction
22 that went bad, and was at a lost, and he owes him for the
23 hedging transaction?

24 THE COURT: The testimony is what it is.

25 MR. PATTERSON: Judge, this is 104-34, Vitol's

1 first amended complaint. I'd ask the Court to admit it.

2 MR. AURZADA: I believe it's already been
3 admitted, Your Honor, but we don't have an objection.

4 MR. PATTERSON: I didn't have it marked, but I
5 thought it was too, but --

6 THE COURT: To the extent we haven't done it
7 before, 104-34 is admitted.

8 (Defense Exhibit 104-34 admitted into evidence)

9 BY MR. PATTERSON:

10 Q. Just to wrap this up, Mr. Loya, this is the complaint
11 your lawyer filed. Do you see it on your screen?

12 A. Yes.

13 Q. Do you see where it says this? Vitol separately
14 agreed to finance GCAC's operations. Do you see that?

15 A. Yes.

16 Q. That is incorrect, right? You did not do that.

17 A. Can I read the whole paragraph to understand --

18 Q. No. I asked you to read that phrase. That's all I'm
19 looking at.

20 A. I can't comment on it unless I read the --

21 Q. You can't comprehend the one phrase?

22 MR. AURZADA: Objection, Your Honor. It's
23 argumentative.

24 THE COURT: Sustained.

25 Q. Do you not understand what separately agreed to

1 finance GCAC's operations means?

2 MR. AURZADA: Same objection. It's the same
3 question.

4 THE COURT: Sustained.

5 BY MR. PATTERSON:

6 Q. Brass represented that he would remit to Vitol the
7 proceeds of the sale of asphalt and other goods purchased
8 with Vitol's money. Do you see that?

9 A. Yes.

10 Q. Is that true?

11 A. Can I read the paragraph?

12 Q. No. I'm asking you if that statement is true. Am I
13 unclear?

14 MR. AURZADA: Your Honor, this is all
15 argumentative and beyond the scope.

16 THE COURT: Yeah. Mr. Patterson, it's the extra
17 question that usually gets you there. I think it's fair to
18 ask you that. Can we put the sentence back up. I want to
19 know what he thinks about that.

20 THE WITNESS: I can't see it, Your Honor.

21 THE COURT: There you go. Look at the underlined
22 sentence. Is that a true -- do you believe that's a true
23 statement or not?

24 THE WITNESS: I believe that's a true statement.

25 BY MR. PATTERSON:

1 Q. All right. And you can identify selling asphalt or
2 goods to Brass.

3 A. Sorry? Ask that question again.

4 Q. You can identify a purchase made with Vitol's money.
5 You gave him money.

6 MR. AURZADA: Mischaracterizes the document, Your
7 Honor.

8 THE WITNESS: Yes.

9 MR. PATTERSON: That's what it says. With
10 Vitol's money.

11 BY MR. PATTERSON:

12 Q. Did you give him the money or did you not give him any
13 money?

14 A. It doesn't say that.

15 Q. It says with Vitol's money. What does it say if it
16 doesn't say that?

17 A. It says purchased goods with Vitol's money.

18 Q. With Vitol's money.

19 A. Vitol bought the goods.

20 Q. That's not what it says. It says with your money.

21 A. To me, it reads purchase of goods with Vitol's money.

22 Q. All right. Vitol entered into this interim agreement
23 because of representations made by Brass. Do you see that?

24 A. Yes.

25 Q. What representations?

1 A. I don't know. I have to --

2 MR. AURZADA: This is outside the scope.

3 BY MR. PATTERSON:

4 Q. You don't?

5 THE COURT: I agree. This is --

6 THE WITNESS: What --

7 THE COURT: Hold on. This is outside the scope
8 of the redirect.

9 MR. PATTERSON: They asked him about the
10 financing, Judge. How is this beyond the scope of the
11 financing if I can't ask him the basis of the financing?
12 Although he can't explain it.

13 THE COURT: That was my point. What's the
14 response? What's the response, counsel?

15 MR. AURZADA: Your Honor, it's outside the scope
16 of the redirect. It was dealt with a bunch yesterday, both
17 in my direct and in the cross. I just don't recall asking
18 him about the misrepresentations in my redirect. That's
19 what I'm saying. We dealt with this yesterday.

20 THE COURT: I'm going to sustain the objection.
21 The question was just generally what his understanding was
22 the difference between a loan and a financing transaction,
23 and he believes that there was a financing. We didn't get
24 into. So I'll sustain that objection. You can ask another
25 question.

1 BY MR. PATTERSON:

2 Q. Vitol also provided GCAC with other funds. Do you see
3 that?

4 A. Yes.

5 Q. Right? How much funds -- what funds did they provide?
6 How much?

7 MR. AURZADA: Same objection, Your Honor.

8 THE COURT: No, on this one, I think it's within
9 the range.

10 THE WITNESS: I don't know how much.

11 BY MR. PATTERSON:

12 Q. You have no idea? Millions?

13 A. Millions, because hedging is in there. So obviously.

14 Q. No. I said funds. Funds. Not hedging, operations.

15 Operations of Vitol is hedging. Operations of GCAC is not
16 hedging, right?

17 A. It says funds necessary for operations, including
18 freight, (indiscernible - 3:26:57), inspections, storage,
19 hedging, my emphasis, and other related costs.

20 Q. Right.

21 A. So you asked me how much. I said I don't remember. I
22 don't know. Not I don't remember, I don't know. It must
23 be large because it included hedging.

24 Q. Right. And I ask you, do you have any documents that
25 reflect any hedges made by GCAC, and you said no.

1 A. No, I didn't say that.

2 Q. Right? No, you said you have an understanding that
3 the hedges made by Vitol were going to be covered by GCAC.
4 That's what you said, right?

5 A. I don't know what documents are available. I don't
6 know what emails are available. I do not know. I'm not in
7 -- I was not reviewing documents. I was not responsible
8 for the documents.

9 Q. Let me -- what --

10 A. I don't know how many documents, if any, are out
11 there.

12 Q. What document would reflect that obligation on behalf
13 of GCAC?

14 A. It would -- first, an understanding, even verbal would
15 be how it's operated, whether any record of claims or
16 demands for you owe this money for hedges, any payments for
17 previous hedges. Things like that.

18 Q. What document --

19 A. Those are documents.

20 Q. Those aren't -- an understanding is a document? Where
21 is it?

22 MR. AURZADA: Argumentative, Your Honor.

23 THE COURT: I really thing we've crossed all of
24 these bridges a good four times, and I've allowed it to go.
25 He said he doesn't know if there are any documents out

1 there, and he hasn't reviewed any documents. He did say he
2 believes documents would exist, but he doesn't know if any
3 of them are out there. That's the testimony and it will
4 stand for what it says.

5 MR. PATTERSON: He doesn't have a memory until
6 his lawyer's asking him questions. And I think I should be
7 entitled to probe that and to evidence that for the record,
8 to show that his memory is much clearer when another man is
9 standing up here than when I'm standing up here. It's
10 vague and cloudy when I ask him questions, and I think the
11 record should reflect that.

12 MR. AURZADA: I object to every bit of that, Your
13 Honor.

14 THE COURT: No. The record's going to say what
15 it says and I'm going to reserve any thoughts and further
16 exploration on any other issues. I'm taking it all under
17 advisement. I've only heard one witness. I'll see how
18 good everybody else's memory is in this case, and then
19 we'll see where we go.

20 MR. PATTERSON: I have no further questions for
21 the witness, but I do want to address one thing, Your
22 Honor.

23 THE COURT: Okay. Well, hold on. Can we let the
24 witness down before we address it, or do you need him up
25 here?

1 MR. PATTERSON: I just want to do it while he's
2 in the courtroom because it deals with his scheduling.

3 THE COURT: I just want him to --

4 MR. PATTERSON: It's just a scheduling thing.
5 And he can leave the witness stand. I have no more
6 questions for him.

7 THE COURT: Okay.

8 THE WITNESS: Do you want me to step down?

9 THE COURT: Yes, sir. Thank you.

10 THE WITNESS: Thanks.

11 (At 3:29 p.m., witness excused.)

12 MR. PATTERSON: And I really just wanted to
13 address, Your Honor, Mr. Loya, tell him, I think, that he
14 needs to remain available for the trial. I've been
15 informed that he has unavailable dates between the 8th and
16 the 22nd of September. And so I just want to make sure
17 that we --

18 THE COURT: I understand.

19 MR. PATTERSON: -- if he's going to come back, we
20 do it outside of those dates.

21 THE COURT: We do it -- and the 22nd, I believe,
22 is even out anyway. We're going to finish this trial by
23 the 30th. And if he's not available on one of those dates,
24 we'll find him available -- Mr. Loya, I will just -- the
25 18th through the 22nd, I will make sure that no one -- if

1 you're out on those days, that's not going to be a problem
2 for me. But there may be a day within the month of
3 September where you're asked to come back, and I just ask
4 that you make yourself available.

5 MR. LOYA: (Indiscernible - 3:30:40).

6 MR. PATTERSON: 8th through the 22nd. September
7 8th.

8 THE COURT: the 8th? All right. Maybe we see
9 you in Victoria then. It's fine. The 8th through the
10 22nd. I don't even know what dates we're using, but if
11 you've got to come back, I believe there's enough to go.
12 We'll see. I can't guarantee -- if you're out from the 8th
13 to the 22nd, like on travel? Are you just unavailable
14 those days?

15 MR. LOYA: (Indiscernible - 3:31:02).

16 THE COURT: Okay. We'll make the accommodation.

17 MR. AURZADA: Thank you, Your Honor.

18 THE COURT: I don't -- but you will be available
19 in the month of September. That's what I mean. I don't
20 know what days, but obviously we'll make accommodations.

21 Mr. Patterson?

22 MR. PATTERSON: (Indiscernible - 3:31:29).

23 THE COURT: Do you understand that, Mr. Loya?

24 MR. LOYA: (Indiscernible - 3:31:31).

25 THE COURT: Okay. Thank you. I'm sure you'll

1 want to. Yes, sir.

2 Are we bringing Mr. Wagner in? Does he need a
3 break? Tissue? We can take 5 minutes. If anybody needs
4 to use the restroom, grab a water, something like that,
5 now's a good time.

6 Mr. Gross, we're going to take -- I'm going to
7 take five minutes to give everyone an opportunity to kind
8 of get their papers, and reshuffle, and then we'll come
9 back. Thank you.

10 THE CLERK: All rise.

11 (Recessed at 3:32 p.m., to reconvene at 3:42
12 p.m.)

13 THE CLERK: All rise.

14 THE COURT: Okay. Folks, are we ready to
15 proceed? Are you ready? Okay. Okay.

16 MR. PURCELL: Your Honor, before we get started,
17 I believe Mr. Gross will be driving for us, if he can have
18 control.

19 THE COURT: All right. Just a second.

20 MR. PURCELL: Thank you.

21 THE COURT: Just give me a moment.

22 (Pause)

23 THE COURT: Mr. Gross, you still may be a
24 presenter. Okay. Okay. Just don't put anything up quite
25 yet. Okay.

1 Back on the record in *Vitol v. Brass*. Mr.

2 Purcell, what are we doing?

3 MR. PURCELL: Yes, Your Honor. I'm going to
4 finish the examination of -- direct examination of Mr.
5 Wagner.

6 THE COURT: Okay. Mr. Wagner, let me just remind
7 you, sir, that you're still under oath and we'll proceed.

8 MICHAEL WAGNER, WITNESS, PREVIOUSLY SWORN

9 DIRECT EXAMINATION

10 BY MR. PURCELL:

11 Q. Mr. Gross, if you could please pull up Vitol Exhibit
12 81, and it's Bates No. EEPB-175. It should be an Excel
13 spreadsheet. Okay. If you could please go to the first
14 tab of this document and --

15 THE COURT: Can you just say what exhibit that is
16 again? I apologize.

17 MR. PURCELL: Vitol Exhibit 81.

18 THE COURT: So it's Vitol 81.

19 MR. PURCELL: Yes, Your Honor.

20 THE COURT: Okay.

21 MR. PURCELL: Bates EEPB-175. Mr. Gross, would
22 you go to the top of the document, please?

23 THE COURT: Okay. You may proceed, counsel.

24 BY MR. PURCELL:

25 Q. Mr. Wagner, do you recognize EEPB-175?

1 A. I do.

2 Q. What is it?

3 A. It's the Gulf Coast asphalt consolidated income
4 statement.

5 Q. Did you produce a copy of this document in this case?

6 A. Yes.

7 Q. Does this appear to be a true and correct copy of the
8 document you produced?

9 A. It appears to be.

10 Q. From where did you retrieve the document to produce
11 it?

12 A. From (indiscernible - 3:45:19) file room, document
13 management software.

14 Q. And why was this document in Go File Room?

15 A. Because it's part of our work papers for preparation
16 of (indiscernible - 3:45:30).

17 Q. Was it kept in the ordinary course of EPB's business?

18 A. Yes.

19 Q. Is it your regular practice to keep client income
20 statements?

21 A. Yes.

22 Q. Does EEPB have document retention policies?

23 A. Yes.

24 Q. Was this document kept in accordance with such
25 policies?

1 A. Yes.

2 Q. And did you use the information in EEPB-175 for any
3 purpose?

4 A. We did. We used it for the preparation of the tax
5 return.

6 Q. And do you ordinarily rely on client income statements
7 to prepare tax returns?

8 A. Yes.

9 MR. PURCELL: Your Honor, we're move to admit
10 EEPB-175 as business record.

11 MS. GOOTT: (Indiscernible - 3:46:19).

12 THE COURT: Tell me where that falls within 8036.

13 MS. GOOTT: (Indiscernible - 3:46:33).

14 THE COURT: Uh-huh.

15 MS. GOOTT: (Indiscernible - 3:46:51).

16 THE COURT: Do you want to just ask --

17 MS. GOOTT: Objection.

18 THE COURT: Okay. Do you want to just ask the
19 question, counsel?

20 BY MR. PURCELL:

21 Q. Mr. Wagner, from where did you receive this document?

22 A. We got it from GCAC.

23 THE COURT: Well, these -- I mean, we can go
24 through these one by one, but I know he testified when he
25 first got on the stand that he would receive all of his

1 documents from GCAC in connection of the preparation for
2 the tax returns. We can do this one by one. I think you
3 testified earlier. But that's where he would receive
4 income statements from, and documents to prepare the tax
5 returns. So that's what I was relying, Ms. Goott. But if
6 we want to go one by one, I completely understand.

7 MS. GOOTT: (Indiscernible - 3:47:43).

8 THE COURT: No, no, no. That was my confusion.
9 So we can -- you can ask one by one. I was trying to see
10 if we were going to kind of take everything with EEPB on a
11 one document by one document basis. That's why I was
12 asking the parties to talk. But if we're going to do this
13 one spreadsheet at a time, we certainly can. I just -- and
14 that'll be fine.

15 MS. GOOTT: And I just --

16 UNIDENTIFIED: Sorry to interrupt.

17 THE COURT: I'm not saying people should have
18 agreed.

19 UNIDENTIFIED: (Indiscernible - 3:48:11).

20 THE COURT: No, that's --

21 UNIDENTIFIED: (Indiscernible - 3:48:20).

22 THE COURT: I just wanted to make sure that I was
23 clear as to what we were doing today, and that was a little
24 bit of confusion on my part. So why don't you just go
25 through the full analysis every time.

1 MS. GOOTT: And (indiscernible - 3:48:34).

2 THE COURT: I got it, Ms. Goott. No, I --

3 MS. GOOTT: I'm sorry for my frustration. I just
4 -- he offers something into evidence. I object on hearsay
5 that he doesn't comply, and then he gets another chance to
6 go --

7 THE COURT: Well, no, because I was relying on
8 the statements earlier, but it sounds like that's not what
9 we're doing. So I've got to give him a chance, because he
10 testified at the very beginning that all of his -- all of
11 the documents that he receives, all income statements come
12 from GCAC, right? That's what he testified at the very
13 beginning in the general statement.

14 So this is another consolidated income statement
15 that he's seen, that he said he relied on in connection
16 with it, but his earlier testimony is that he only gets
17 these documents from GCAC. So that testimony gets it
18 there, but if you want the clarification for purposes of
19 today, that it links with what he testified yesterday, we
20 can do that.

21 MS. GOOTT: Okay. Thank you.

22 BY MR. PURCELL:

23 Q. Mr. Wagner, just for clarification, from where did you
24 retrieve this document to produce it?

25 A. From Go File Room, our document management system.

1 Q. What else is in that Go File Room for GCAC?

2 A. All the work papers that we just to prepare the tax
3 return. Copies of tax returns that we prepared.

4 Q. What financial documents would that include?

5 A. That would include balance sheets and income
6 statements, trial balances.

7 Q. From where did EEPB receive those documents?

8 A. We received them from the client, GCAC.

9 Q. Is that the same for all the documents EEPB produced
10 in this case?

11 A. Yes.

12 Q. And did you rely on the trustworthiness of those
13 documents to create GCAC's tax returns?

14 A. Yes.

15 Q. Is that in the ordinary course of EEP's business?

16 A. Yes.

17 Q. So Exhibits 175 would be no different than any other
18 financial document you produced for GCAC?

19 MS. GOOTT: Objection. Leading.

20 THE COURT: Sustained.

21 BY MR. PURCELL:

22 Q. Mr. Wagner, why would EEPB have GCAC's income
23 statement?

24 A. Because it's necessary for the preparation of the tax
25 returns since it shows the income and deductions of the

1 company.

2 Q. Did you rely on the truthfulness of this statement in
3 creating tax returns for GCAC?

4 A. Yes.

5 MR. PURCELL: Your Honor, I'm going to move to
6 admit GCAC-175 -- I'm sorry. I misstated that. I'm going
7 to move to admit EEPB-175.

8 MS. GOOTT: (Indiscernible - 3:51:36).

9 THE COURT: It's --

10 MR. PURCELL: It's a portion of Exhibit 81. I
11 was just providing the Bates number, Your Honor. So I --

12 THE COURT: 81.

13 MR. PURCELL: 81, EEPB-175. It's just a portion
14 of that exhibit.

15 THE COURT: Did you get that all, Ms. Martina?
16 Ms. Goott?

17 MS. GOOTT: (Indiscernible - 3:51:54).

18 VOIR DIRE

19 BY MS. GOOTT:

20 Q. You testified that you relied on this exhibit to
21 create a tax return; is that correct?

22 A. It's part of the information we use to prepare tax
23 returns.

24 Q. And for what year?

25 A. This would have been for the 2017 tax year.

1 Q. And when was that tax return filed?

2 A. It would have been filed at some point in 2018. I
3 don't know the exact date.

4 Q. Do you know what quarter?

5 A. I don't know. I could not say for certain. It would
6 have been filed sometime before September 15th, which would
7 have been the extended due date.

8 Q. Did you request an extension or did GCAC request an
9 extension?

10 A. I don't recall.

11 Q. So you don't know when this was filed?

12 A. When -- this isn't the tax return. So but yeah, I
13 don't remember --

14 Q. The tax -- I apologize. You're right.

15 A. Right. I don't remember when we filed the actual tax
16 return.

17 Q. And when did you receive this document from GCAC?

18 A. At some point in 2018. I don't remember the exact
19 date.

20 Q. And did you, and when I say you, I mean you and the
21 people that work for you, make any changes or modifications
22 to this Excel spreadsheet?

23 A. No, we would not.

24 Q. Is that not normal practice to make any modifications
25 or changes?

1 A. Not to the client-provided data. We don't make
2 modifications to it.

3 Q. Okay. Do you ever reproduce an Excel spreadsheet
4 based on the information that you do receive?

5 A. We sometimes use that to create other Excel
6 spreadsheets, which would be our work papers and not the
7 client's work papers.

8 Q. So you would have never modified this document after
9 you received it?

10 A. Correct.

11 Q. When did you produce this to Vitol?

12 A. It was in 2020. I don't remember the exact date.

13 MS. GOOTT: Judge, just one quick question. One
14 second.

15 (Pause)

16 THE COURT: Okay. Let me make sure I got this
17 right. EEPB-81, can we call it hyphen 175? I just want to
18 get something for the record that we all know.

19 MR. PURCELL: Your Honor, sorry, I believe it
20 might be better to called it Vitol 81-175, to be clear.

21 THE COURT: Vitol 81-175. That works for me. As
22 long as we all agree on what that means, it's admitted.

23 (Vitol Exhibit 81-175 admitted into evidence)

24 MR. PURCELL: Mr. Gross, could you please pull up
25 Vitol Exhibit 81 at Bates 181. That's a little confusing.

1 Vitol Exhibit 81 at EEPB-181. Thank you.

2 DIRECT EXAMINATION (Resumed)

3 BY MR. PURCELL:

4 Q. Mr. Wagner, do you recognize this document?

5 A. Yes.

6 Q. What is it?

7 A. It's the Gulf Coast Asphalt Company consolidated
8 balance sheet for 2018.

9 Q. Did you produce this document in this case?

10 A. Yes.

11 Q. Does it appear to be a true and correct copy of the
12 document you produced?

13 A. Yes.

14 Q. From where did you retrieve this document to produce
15 it?

16 A. From our Go File Room document management software.

17 Q. And why was this document in Go File Room?

18 A. Because it's used in the preparation of the tax
19 return.

20 Q. Was it kept in the ordinary course of your business?

21 A. Yes.

22 Q. Was it kept with other Gulf Coast financial documents?

23 A. Yes.

24 Q. Is it your regular practice to keep client balance
25 sheets?

1 A. Yes.

2 Q. Who did EEPB receive this document from?

3 A. We received it from GCAC.

4 Q. Does EEPB have document retention policies?

5 A. Yes.

6 Q. And does this document fall within such policies?

7 A. Yes, it does.

8 Q. Was it kept in accordance with such policies?

9 A. Yes, it was.

10 Q. And did you rely on this document to create Gulf Coast
11 tax returns?

12 A. Yes, we did.

13 Q. And do you ordinarily rely on client balance sheets to
14 create tax returns?

15 A. Yes, we do.

16 MR. PURCELL: Your Honor, I'm going to move to
17 admit Vitol 81-181 into the record.

18 THE COURT: Any objection?

19 MS. GOOTT: (Indiscernible - 3:57:45).

20 THE COURT: Okay. Vitol 81-181 is admitted.

21 (Vitol Exhibit 81-181 admitted into evidence)

22 MR. PURCELL: Mr. Gross, would you please pull up
23 Vitol Exhibit 81 at EEPB 190?

24 BY MR. PURCELL:

25 Q. Mr. Wagner, do you recognize this document?

1 A. Yes.

2 Q. What is it?

3 A. It's the Gulf Coast Asphalt Consolidated income
4 statement for 2018.

5 Q. Did you produce this document?

6 A. Yes.

7 Q. Does it appear to be a true and correct copy of the
8 document you produced?

9 A. Yes.

10 Q. From where did you retrieve this document to produce
11 it?

12 A. From our Go File Room document management system.

13 Q. And why was this document in the Go File Room?

14 A. Because it's part of our work papers for the
15 preparation of the tax return.

16 Q. And who provided you with this document?

17 A. It came from GCAC.

18 Q. Was this document kept in the ordinary course of your
19 business?

20 A. Yes.

21 Q. Was it kept with other Gulf Coast financial documents?

22 A. Yes.

23 Q. Is it your regular practice to keep client income
24 statements?

25 A. Yes.

1 Q. Does EEPB have document retention policies?

2 A. Yes.

3 Q. Does this document fall within such policies?

4 A. Yes.

5 Q. Was this document kept in accordance with such
6 policies?

7 A. Yes.

8 Q. And did you use the information in this document to
9 create Gulf Coast tax returns?

10 A. Yes, we did.

11 Q. And do you ordinarily rely on such documents to create
12 tax returns?

13 A. Yes, we do.

14 Q. Okay.

15 MR. PURCELL: Your Honor, we'd move to admit
16 Vitol 81-190 into the record.

17 THE COURT: Any objection?

18 MS. GOOTT: (Indiscernible - 3:59:33).

19 THE COURT: Uh-huh.

20 MS. GOOTT: (Indiscernible - 3:59:39).

21 THE WITNESS: Not that I'm aware of.

22 MS. GOOTT: (Indiscernible - 3:59:56).

23 THE COURT: We do not make changes to the client
24 versions.

25 MS. GOOTT: (Indiscernible - 4:00:02).

1 THE COURT: Okay. Vitol 81-190 is admitted.

2 (Vitol Exhibit 81-190 admitted into evidence)

3 MR. PURCELL: Your Honor, we have nothing further
4 from this witness.

5 THE COURT: Okay. Thank you for your patience.

6 I hope you have a good weekend.

7 THE WITNESS: All right. Thank you.

8 (At 4:00 p.m., witness excused)

9 THE COURT: Okay. Who's next?

10 MR. PURCELL: Your Honor, Vitol calls Chris
11 Murray.

12 THE COURT: Ms. Goott?

13 MS. GOOTT: I'm going to object to Mr. Murray
14 being called as a witness --

15 THE COURT: Okay.

16 MS. GOOTT: -- in this case. He was not listed
17 in their initial disclosures. We had no knowledge that he
18 was going to be called as a witness to testify until they
19 filed their exhibit list. The rules specifically require
20 witnesses, their contact information to be disclosed, and
21 he was not.

22 THE COURT: Okay. Mr. Beatty, why don't -- I
23 know you represent Mr. Murray, why don't -- let me resolve
24 this before, if at all, Mr. Murray's going to be called.
25 Okay?

1 MR. BEATTY: Certainly, Your Honor.

2 THE COURT: Okay. Mr. Cooley.

3 MR. COOLEY: Yes, Your Honor. Thank you.

4 Counsel argues that we didn't supplement our
5 initial disclosures to identify Mr. Murray as a potential
6 witness having relevant information. In fact, Your Honor,
7 they told us.

8 The text of the rule, and let's start there, Rule

9 26 --

10 THE COURT: Okay. You can just get -- I just
11 want to make sure you have a mic so we can get there.

12 MR. COOLEY: Thank you, Your Honor. Let me make
13 sure I get in a better spot.

14 THE COURT: Okay.

15 MR. COOLEY: The text of Rule 26(e)(1)(A) says --

16 THE COURT: Give me a second. Let me get there.
17 Let's all get there.

18 MR. COOLEY: Yes, of course.

19 THE COURT: 7026(e)(1)(A)?

20 MR. COOLEY: Technically, this would be Rule
21 26(e)(1)(A) incorporated by 7026, Your Honor, but yes.

22 THE COURT: Okay.

23 MR. COOLEY: And the rule states that a party who
24 has made a disclosure under Rule 26(a), as we did at the
25 beginning of the case, must supplement or correct under

1 part A in a timely manner if the party learns that some
2 material respecting the disclosure response is incomplete
3 or incorrect, and if the additional or corrective
4 information has not otherwise been made known to the other
5 parties during the discovery process or in writing. And it
6 says, or as otherwise ordered by the Court, but I'm not
7 interested in that piece of it today. Or I'm not going to
8 be raising it.

9 I'm concerned with part A, which asks whether the
10 information has not otherwise been made known to the other
11 parties during discovery. And, Your Honor, Advisory
12 Committee Note -- the Advisory Committee Note to Rule 26(e)
13 makes clear that there is no obligation to supplement where
14 "information has been otherwise made known to the parties
15 in writing, or during the discovery process, as when a
16 witness not previously disclosed is identified during the
17 taking of a deposition." And that is a quote from the
18 Advisory Committee Note to Rule 26(e).

19 THE COURT: For which year?

20 MR. COOLEY: 1983, I believe, Your Honor.

21 THE COURT: All right. Let's see if we can get
22 there.

23 (Pause)

24 THE COURT: Why don't you point me -- I'm looking
25 at the '83 amendment notes. Why don't you get me there?

1 (Pause)

2 THE COURT: Can you tell me where? Under which
3 subdivision it's describing there. It should be under A,
4 right? Or no, it should not be under A. I see A, B.

5 MR. COOLEY: I think I may have it on my screen
6 actually, Your Honor.

7 THE COURT: Maybe you're looking --

8 MR. COOLEY: I believe it is under subsection E
9 of the --

10 THE COURT: Is that the 70th amendment?

11 MR. COOLEY: -- notes. And this is under -- and
12 I'm scrolling up.

13 THE COURT: Is this the 70th amendment?

14 MR. COOLEY: I'm just scrolling up to check that
15 very fact, Your Honor -- or that very question. I
16 apologize. The 1993 amendment --

17 THE COURT: Yeah.

18 MR. COOLEY: -- part E.

19 THE COURT: All right. 1993 amendment of part E.
20 Which paragraph am I looking at here?

21 MR. COOLEY: The last paragraph, just before the
22 beginning of subdivision F.

23 THE COURT: The obligation?

24 MR. COOLEY: Yes, sir.

25 THE COURT: All right.

1 (Pause)

2 THE COURT: Okay. What's your point?

3 MR. COOLEY: In this case, Your Honor, that took
4 place in the course of an exchange in Mr. Brass's -- or
5 excuse me, in Vitol's deposition of Mr. Brass in this case
6 during the discovery period on March 25th, 2002.

7 If I may, Your Honor, I'd like to ask Mr. Gross
8 to put that up on the board for the Court to see the
9 relevant passage.

10 (Pause)

11 MR. COOLEY: Your Honor, may I --

12 (Pause)

13 MR. PATTERSON: (Indiscernible - 4:05:59).

14 MS. GOOTT: The bottom line is, Your Honor, I
15 stand here today, and I have absolutely no idea what topics
16 are they calling Mr. Murray about the Debtor's schedules?
17 Are they calling him because he's the trustee of GCAC? Are
18 they calling him because he's the trustee of Trifinery
19 (phonetic)? I have no clue what even the topic could be.
20 This isn't the Debtor's CPA that we all can kind of figure
21 out he's going to talk to him about his tax returns. I
22 have no clue. Zero. Because they didn't put it in their
23 initial disclosures and they didn't amend their
24 disclosures.

25 MR. COOLEY: Your Honor, if I could finish my

1 presentation, perhaps some of these questions would be
2 answered.

3 MS. GOOTT: If you could just tell us when and --

4 THE COURT: Okay. I'll let you -- no one's here.

5 It's just lawyers. You can put it up, obviously.

6 MR. COOLEY: Thank you, Your Honor. Mr. Gross,
7 could I have Vitol Exhibit 121, and let's just start on the
8 first page. And --

9 MS. GOOTT: I'm going to object (indiscernible -
10 4:07:07).

11 THE COURT: It's not offered -- I'm not sure it's
12 being offered for the truth of the matter asserted. It's
13 just asserting whether you got notice of something.

14 MR. COOLEY: And if we could have -- very -- just
15 showing the first page references March 25th, if we could
16 have pdf page 104. And at this point, I'll ask the Court
17 to just take judicial notice that Mr. Murray is also the
18 Chapter 7 trustee, currently administering the case of Mr.
19 Brass.

20 THE COURT: Uh-huh.

21 MR. COOLEY: And at lines -- beginning at line 3,
22 it says, "By Mr. Aurzada, and he asked the question, if you
23 want to define the books and records of Gulf Coast,
24 including an income statement, a balance sheet, and a
25 general ledger, where would you go to find it?" And at line

1 8, Mr. Patterson intercedes, according to the document, and
2 says, "Objection. Calls for speculation. We're going to
3 play hide and seek. But if you are really looking for
4 them, go to the trustee. They have possession of
5 everything."

6 Your Honor, our position here is that the rule
7 clearly states that supplemental disclosure is not
8 necessary as a matter of substance over form, where the
9 parties are already aware of the individual. I would not,
10 Your Honor, that Mr. Murray was not on their disclosures as
11 someone who would have information relating to the books
12 and records, and yet, in a deposition, transcribed by a
13 court reporter, Mr. Patterson instructed Mr. Aurzada that
14 if we were looking for the books and records, to go to Mr.
15 Murray.

16 That told us that Mr. Murray was the person who
17 would have information about the books and records of the
18 Debtor, and that is the purpose for which he is being
19 called.

20 MS. GOOTT: The Debtor is not GCAC in this case.
21 Period. End of story.

22 MR. PATTERSON: (Indiscernible - 4:09:10).

23 MR. COOLEY: And, Your Honor, it --

24 THE COURT: Hold on a second. I think everybody
25 -- because everybody's arguing. I've got four different

1 people arguing. I'm just going to read the rule. Tell me
2 where in this, Mr. Cooley, is there a statement that says
3 fine, that's what I'm going to do, so that you put them on
4 notice that's what you were going to do?

5 I got it. They said go talk to them. Is there
6 something in here that says, that's what I'll do, that
7 would trigger notice to the other side that that's what
8 you're going to do?

9 MR. COOLEY: I don't know that there is, Your
10 Honor. The point I'm here to make today is that they
11 provided notice to us that he was a person with
12 information. Therefore, it was known to them -- there was
13 -- the issue here is whether they are surprised. And I
14 understand the technicality that they are arguing to the
15 Court, but the argument, the issue surrounds the question
16 of notice. The rules are designed to ensure parties
17 provide notice. And for the Debtor to say, for Mr. Brass's
18 counsel to say that they were unaware of the possibility
19 that Mr. Murray would be a relevant witness, and in -- on
20 the books and records of GCAC. I did misspeak earlier. I
21 said the records of the Debtor. The records of GCAC is
22 simply a disingenuous argument.

23 He has been known to all of the parties to have
24 the records. Ultimately, that is what happened. We went
25 and got his records. And here we are today.

1 MS. GOOTT: (Indiscernible - 4:10:39) subpoenaed?

2 THE COURT: Hold on a second, folks. I'm going
3 to think -- no, I'm going to think about this a little bit.

4 MS. GOOTT: Subpoena them?

5 THE COURT: No, no, no.

6 MR. COOLEY: No, I don't believe we did.

7 THE COURT: Folks.

8 MS. GOOTT: Oh, so please -- you should probably
9 correct your statement.

10 THE COURT: Folks, Murray's not testifying today.
11 I'm going to take this under advisement. I see nothing
12 where they've been put on notice -- they have been put on
13 notice that this is what you're going to do. Unless you
14 can find me a document, deposition transcript says this is
15 who -- you can go talk to -- I don't see anything where you
16 say this is what I'm going to do.

17 And I'm going to go back and I'm going to look at
18 the cases. You know me. I'll let you know. And if
19 somebody has something that tells me the Fifth Circuit has
20 told me otherwise, I'll listen to it. I do take the
21 advisory notes incredibly serious, but I'm looking at the -
22 - at what's happening here, and I don't see something in
23 writing. Right? So that's out. And I don't see during
24 the discovery process as when a witness not previously
25 disclosed as identified during the taking of a depo -- I

1 don't -- I think that's a little bit of a -- I think you've
2 got to identify him and say this is what we're going to do.
3 Well, fine, we're going to go get them.

4 But I'm going to go take a look at the cases and
5 I'll know. I'll know one way or the other. You'll know my
6 answer by -- I'll post something. If anything changes,
7 I'll file something. You know I'll write it over the
8 weekend.

9 MS. GOOTT: Thank you, Judge. And while --
10 before Mr. Beatty leaves, because he's counsel for the
11 trustee, I think it's important for him to say, unless Mr.
12 Cooley wants to change his statement to the Court, but --

13 THE COURT: I'm not worried about that.

14 MS. GOOTT: Didn't depose him. Didn't ask for
15 documents, so --

16 THE COURT: No, no. I'm asking for a --
17 something affirmative. And if somebody can find something
18 affirmative, then that will do it. If not, Murray's not
19 testifying. We can go to Tomashevsky.

20 MR. COOLEY: Very well, Your Honor.

21 THE COURT: But I -- Mr. Beatty, I will tell you,
22 and I think you know this about me, I'm probably going to
23 spend the weekend looking at a lot of this, and so if any -
24 - if there is a -- no, that's fine. I was going to do it
25 anyway. If I see any briefing or anything that tells me

1 absolutely, I'll call him back. I'm just saying, he's not
2 going to testify today based upon what I'm hearing, but I
3 think it's important for me to get the right answer and not
4 just the answer that I'm looking at, based on an advisory
5 note.

6 But I don't think it complies with the rule. But
7 I'll look at it and I'll -- if anything changes, I'll let
8 you know.

9 MR. BEATTY: Thank you, Your Honor. And just for
10 the record, we are Switzerland on this position. If the
11 Court wants Mr. Murray to come testify, he's more than
12 happy to do so based on whatever the Court rules.

13 THE COURT: Thank you.

14 MR. BEATTY: And just for clarification, Your
15 Honor, can I tell Mr. Murray he's at least released for
16 today?

17 THE COURT: Yeah.

18 MR. BEATTY: Thank you.

19 THE COURT: Tell him, you know, I may stick it to
20 him and make him come to Victoria at some point, but he
21 knows that.

22 Where do we go next, Tomashevsky?

23 MR. COOLEY: Yes, Your Honor.

24 THE COURT: Okay. Or Tomashevsky depo.

25 MS. GOOTT: And I might be able to speed this up

1 a little bit.

2 THE COURT: Do you want me to step off?

3 MS. GOOTT: No, no, no. I just -- if I could
4 address the Court.

5 THE COURT: Yeah.

6 MS. GOOTT: We read the Court's ruling on
7 Tomashevsky and the -- we asked to strike it. We get the
8 Court's ruling. We don't oppose the entry of the
9 deposition but two things. Number one, the whole thing
10 needs to come in. If it's coming in pieces of it, all of
11 it needs to come in. And number two, I made a lot of
12 objections and those need to be ruled on before -- within
13 the deposition. That's all.

14 THE COURT: That seems fair.

15 MR. PURCELL: Your Honor, no problem with those.
16 And I think there's a couple of ways you can do it. You
17 can do it with the video and we can call live shouts here,
18 and we can -- Ms. Gott can assert her objections and we
19 can ask for a ruling on it. We can provide it to the Court
20 to do it on its on time.

21 MS. GOOTT: Yeah. It's already in the
22 (indiscernible - 4:14:44).

23 MR. PURCELL: That's what I would recommend, but
24 I want to comply with the Court's wishes.

25 THE COURT: That's what I would want. Can

1 someone -- but is it -- where do I --

2 MR. PATTERSON: (Indiscernible - 4:14:58).

3 THE COURT: Yeah. So they were going to try to
4 go live, but to get the full transcript in, would you all
5 be okay if it got filed as an exhibit?

6 MR. PURCELL: And, Your Honor, we did include the
7 exhibits to Mr. Tomashevsky's deposition on our exhibit
8 list. I can find those numbers. I believe it's 108 to
9 115. And they were designated as such.

10 THE COURT: I'm saying, is there one way to just
11 have one document that I can then look at and then get the
12 whole -- if we can get the whole transcript in one time, I
13 can then on my -- rule on it.

14 MR. PATTERSON: (Indiscernible 4:15:32).

15 THE COURT: Yeah.

16 MR. PATTERSON: (Indiscernible 4:15:34).

17 THE COURT: No.

18 MR. PATTERSON: (Indiscernible 4:15:36).

19 THE COURT: Okay.

20 MR. PATTERSON: (Indiscernible 4:15:39).

21 THE COURT: No, no. I understand what you meant.

22 MR. PATTERSON: (Indiscernible 4:15:42).

23 THE COURT: Yeah. That seems fair to me. As
24 long as --

25 MR. PATTERSON: (Indiscernible 4:15:48).

1 THE COURT: Uh-huh.

2 MR. PATTERSON: (Indiscernible 4:16:03).

3 THE COURT: Everybody's rights are reserved,
4 yeah. Because I think -- I suspect that within the depo
5 transcripts, there will be objections to exhibits within
6 there that I'd have to rule on.

7 MR. PATTERSON: (Indiscernible 4:16:13).

8 THE COURT: Agreed.

9 MR. PATTERSON: (Indiscernible 4:16:20).

10 MR. COOLEY: That's right, Your Honor. And
11 obviously we're fine with the -- microphone -- we're fine
12 with the entirety of the deposition transcript. That's
13 certainly the simplest way, rather than the Court taking
14 our notice of deposition excerpts and going back and forth.

15 Obviously, a deposition is not a hearing. And so
16 to the extent that objections have been made, counsel
17 didn't necessarily respond to those objections, so the
18 Court would not have the benefit of that. I don't know
19 what the way is to handle that, other than perhaps if there
20 is an objection, that the Court believes may be valid in
21 such a way that would be dispositive of the issue, we would
22 certainly want an opportunity to respond.

23 THE COURT: No, and I think everybody's rights
24 are reserved. Why don't we just get the transcript in. I
25 have never looked at the transcript, so I don't -- I need

1 to get a feel for what -- yes. Which is why I don't want
2 to do it by video.

3 MR. COOLEY: Yes, Your Honor. And --

4 THE COURT: Get a feel for what we're talking
5 about.

6 MR. COOLEY: -- ultimately, so that -- I
7 apologize.

8 THE COURT: And there may be two portions of it,
9 right? Because I remember there was a split in it, and
10 then we -- or at least there was a phone call made during
11 it; wasn't there?

12 MR. COOLEY: Yes, Your Honor.

13 THE COURT: I do remember a phone call being made
14 during it. So there could be -- maybe not two days, but
15 two -- I just want it all smooshed together is what I mean.
16 One document.

17 MR. COOLEY: And --

18 MS. GOOTT: (Indiscernible - 4:17:54).

19 THE COURT: No, no. I'm asking -- that's what
20 I'm asking for, but one document. Not like a part one,
21 part two. I want it all -- one document, to the extent it
22 is one, and we can all take it up at the appropriate time.
23 And then I can understand -- I do want everyone to have
24 advanced notice, if there's going to be objections to
25 individual exhibits within there, then I'll have an

1 opportunity to think about those as well. So that when we
2 take up all the objections, we take them all up at once,
3 and I can -- individual to the testimony. Individual to
4 the exhibits. We're all clear, and I can take them all up
5 at one time.

6 MR. COOLEY: I think that makes sense, Your
7 Honor. We'll file it on the docket. We will also
8 supplement our witness and exhibit list for simplicity's
9 sake. I don't know what the next consecutive number, but
10 we'll just call it --

11 THE COURT: Whatever the number is.

12 MR. COOLEY: -- whatever it is. Just to provide
13 context, I won't get into detail because I don't think this
14 is the time, but just so the Court knows why the Court is
15 going to spend the weekend reading this, we will be moving
16 the admission of one or more of the exhibits --

17 THE COURT: No, no. I understand. I understand.

18 MR. COOLEY: -- discussed in the course of the
19 deposition.

20 THE COURT: I got it. That makes sense.

21 MR. COOLEY: That will be the purpose of it.

22 THE COURT: That makes sense. That makes sense.
23 Okay. So you will then file it as Vitol, whatever the next
24 number is, the entire transcript. Can you also file the
25 exhibits as well, as -- unless -- is there some

1 confidential stuff in there?

2 MR. COOLEY: We'll check -- I don't know the
3 answer to that, but we'll check on the confidential -- the
4 issue I do know there will be is at least one of the
5 exhibits is an Excel spreadsheet --

6 THE COURT: Oh, no I remember. I remember.

7 MR. COOLEY: -- of which the Court may be
8 familiar.

9 THE COURT: Yeah. Yeah. Which you're going to
10 be able to do.

11 MR. COOLEY: We can certainly file a --

12 THE COURT: We can deal with that.

13 MR. PATTERSON: (Indiscernible - 4:19:31).

14 THE COURT: That's exactly right. Just -- that's
15 exactly right.

16 MR. COOLEY: We'll do it, Your Honor.

17 THE COURT: Yeah. Okay.

18 MR. COOLEY: We'll do it.

19 THE COURT: So where does that leave us for --

20 MR. COOLEY: Where that leaves us at this point,
21 Your Honor, is frankly racing ahead at a speed that we had
22 not anticipated at this point in the afternoon.

23 Mr. Kuo had travel plans --

24 THE COURT: No, that's fine.

25 MR. COOLEY: -- beginning later this afternoon,

1 and so --

2 THE COURT: Why don't we --

3 MR. COOLEY: -- based on where things were going
4 to be coming out --

5 THE COURT: What's our next day? When are we --

6 MR. COOLEY: Your Honor called for Wednesday, so
7 we planned to come back Wednesday morning, if the Court
8 wishes.

9 THE COURT: Ms. Goott, can you do Wednesday?

10 MS. GOOTT: (Indiscernible - 4:20:27).

11 THE COURT: I don't know. No, I don't want to
12 start with anyone because we'll -- we won't get there.
13 We'll do -- who are you starting with, Mr. Kuo?

14 MR. COOLEY: It would be Mr. Kuo, Your Honor.

15 THE COURT: Okay.

16 MR. COOLEY: Unless we were taking up Tomashevsky
17 at that point. I don't know how that's going to play out.

18 THE COURT: No.

19 MR. COOLEY: But in terms of a live witness, we
20 would start with Mr. Kuo.

21 THE COURT: I want to get live witnesses out. We
22 can always come back. So why don't we start -- let's see -
23 - just give me a second.

24 (Pause)

25 THE COURT: I should have asked Mr. Beatty how

1 long is 10 o'clock was going to take on Wednesday. He's
2 here.

3 MR. PATTERSON: (Indiscernible - 4:21:14).

4 THE COURT: No, no, no, it's an uncontested
5 motion to sell real property so it -- but it looks like
6 there's a -- they filed a notice of upset bid. And I don't
7 know what that means. I guess somebody else came up with
8 something more.

9 Why don't we start at 10:30 on Wednesday. And
10 we'll just go.

11 MR. COOLEY: Very well, Your Honor.

12 THE COURT: My hope would be to be done with Kuo
13 on that day, so we should be able to go late into the day
14 on Wednesday. What day after that are we going to go?
15 What -- after that -- what day do you need? That would be,
16 according to your schedule, Mr. Brass?

17 MR. COOLEY: According to our schedule, that
18 would be Mr. Brass. And I was going to raise a related
19 point, which is, as I said, it is our intention to go
20 forward -- to begin with Mr. Kuo on Wednesday. I know that
21 counsel has indicated that they have continuing potential
22 objections to one or more witnesses we intend to call. I
23 don't know whether Mr. Kuo falls into that category, and if
24 he does, whether or not the Court would sustain such an
25 objection.

1 The reason I raise it is, if that were the case,
2 then in order not to waste the Court's time, our next
3 witness we would intend to call is Mr. Brass. For obvious
4 reasons, Mr. Brass is the one witness here who I can't just
5 call on the telephone to confirm his attendance.

6 THE COURT: Well, why don't we just bring Kuo --
7 I mean, Brass -- can we bring Kuo and Brass -- just -- I
8 don't know how long Kuo is going to take. I suspect it
9 will be a while because -- but we can bring Kuo and Brass
10 that day as well.

11 MR. COOLEY: That's fine with us, Your Honor.

12 THE COURT: Okay. We'll start on Wednesday. But
13 after Wednesday, the 7th, what day are we looking at? I
14 just -- the reason I'm asking is I don't -- I get -- my
15 case manager sets hearings over the weekends as well, and I
16 know she gets calls and stuff like that in the weekends.
17 Is there a date I can at least block to make sure that we,
18 you know -- Ms. Goott, I'll turn to you. If it's the 7th -
19 - after the 7th.

20 MS. GOOTT: I don't want the Court to think that
21 I'm not being -- that I'm being disingenuous, so I'm going
22 to address this issue, because when I hear you asking me
23 when am I going to bring Mr. Brass --

24 THE COURT: That's -- no. Then I misphrased.
25 No, no, then I misphrased it.

1 MS. GOOTT: Because he has -- he has --

2 THE COURT: I'm just wondering -- I'm just really
3 -- I completely misspoke. On the 7th, I know we're going.
4 I'm just literally thinking of the next date that I could
5 block out. And I don't mean to imply anything other than
6 what dates can I say that we will reconvene *Vitol v. Brass*.

7 MS. GOOTT: Just the dates of who they think
8 they're going to call.

9 THE COURT: Correct.

10 MS. GOOTT: Got it. I just didn't --

11 THE COURT: No, no, no. I'm just trying to block
12 dates out. I'm just trying to block dates out. That's
13 literally what I'm trying to do. We can do the 7th, the
14 9th, whatever dates I gave you. If the parties -- I just
15 want to put a block on it so that if Ms. (indiscernible -
16 4:24:27) gets a call for some emergency party that needs a
17 hearing or something, that she knows that we can block out
18 that -- that that time is blocked out now. I want to give
19 *Vitol v. Brass* --

20 MS. GOOTT: I'm free any time 7th, 8th, 9th.

21 THE COURT: Okay.

22 MR. COOLEY: Your Honor, if I may, in the spirit
23 of reserving rights, the reason I flagged it, as I said,
24 Mr. Brass is not under my control. I certainly can't call
25 him up and --

1 THE COURT: No, no, no. I got your point. I got
2 your point.

3 MR. COOLEY: And we have issued trial subpoenas.

4 We have gone through -- we have issued trial subpoenas. We
5 have not been able to make personal hand delivery to Mr.
6 Brass, although we have made several attempts. A subpoena
7 has been left at his house. Service was attempted through
8 counsel. That was unsuccessful as well.

9 MR. PATTERSON: (Indiscernible - 4:25:22).

10 MR. COOLEY: And so we are continuing --

11 THE COURT: Guys, if somebody can just give me
12 dates, that's literally it. And then everybody can have a
13 wonderful Labor Day.

14 MR. COOLEY: Very well.

15 THE COURT: Because literally, I just want -- I
16 just need Ms. Aldania (phonetic) to have a date.

17 MR. COOLEY: In that case, from our standpoint,
18 Your Honor, we're prepared to go on the 7th. The only
19 thing is at some point, depending on what happens with Kuo
20 and Brass, as I said, the next one is going to be Mr.
21 Dietz, and I know he had indicated --

22 THE COURT: No, no. I got it. I just literally
23 want like one more day so that we can then talk on the 7th,
24 and then I can pick another day in advance. So if I know -
25 - what other day are folks available? And literally, I'm

1 just trying to put in a block.

2 MR. PATTERSON: (Indiscernible - 4:26:02).

3 THE COURT: Okay. So --

4 MR. PATTERSON: (Indiscernible - 4:26:07).

5 THE COURT: Okay. The 8th is bad for me. I've
6 got to be honest. I've got 7 -- so 7th at 10:30 until --
7 and then what about the week of the 12th? What days look
8 okay for folks then? If we did an afternoon, could we do
9 the afternoon of the 14th, just as a block, or 11 o'clock
10 on the --

11 MR. PATTERSON: (Indiscernible - 4:26:35).

12 THE COURT: Hold on a second. You have all the
13 time you need on that -- you have to be there.

14 MR. PATTERSON: (Indiscernible - 4:26:55).

15 THE COURT: What about the 15th? I'm giving you
16 the whole afternoon on that one. What about the 15?

17 MR. PATTERSON: (Indiscernible - 4:27:07).

18 THE COURT: What about the afternoon of the 15th
19 -- or 11 o'clock on the 15th, starting at 11:00?

20 MR. COOLEY: I believe from our side, we're good
21 each of those dates. Again, Your Honor, I'm not speaking -
22 -

23 THE COURT: No, no, no.

24 MR. COOLEY: -- for Mr. Dietz, but at least --

25 THE COURT: Got it. No, no, no. I'm just trying

1 to get to the -- and I may -- okay. So I'm going to do --
2 I'm going to block off --

3 MR. PATTERSON: (Indiscernible - 4:27:26).

4 THE COURT: Yeah.

5 MR. PATTERSON: (Indiscernible - 4:27:29).

6 THE COURT: That's okay. So why don't we start
7 at 11:00, go until we go, and then if we need to take a
8 break for an hour, that's completely fine with me.

9 MR. PATTERSON: (Indiscernible - 4:27:50).

10 THE COURT: We'll keep working around it. Okay.
11 I'm going to block off 11 o'clock the rest of the afternoon.
12 That's Thursday. It's Thursday. I can't start until --
13 that's Thursday. I teach. I forgot.

14 You all are going to scare them off. What about
15 the 16th, Friday, the 16th?

16 MR. PATTERSON: (Indiscernible - 4:28:24).

17 THE COURT: Just as a block, not in stone, just
18 as a block.

19 MR. COOLEY: Yes, Your Honor.

20 THE COURT: Yeah. Why don't we start at 10:00 --
21 let's see. Hold on. Let me see if this is contested or
22 not. Okay. It looks like it -- why don't we start at --
23 I've got an uncontested confirmation hearing, but I don't
24 know how -- somebody's actually going to show up or not.
25 Why don't we start at 11 o'clock, and just go -- like 11:00

1 to 5:00.

2 MR. COOLEY: On the 16th, Your Honor?

3 THE COURT: On the 16th. Just as a block.

4 MS. GOOTT: As a bit of an update, I sent Mr.
5 Beatty a message, asking him what he believes his 10:00
6 a.m. hearing on Wednesday, how long that will take. He
7 said 15 minutes, 30 at worst.

8 THE COURT: Okay.

9 MS. GOOTT: So that works.

10 THE COURT: So let's start at 10:30 then on
11 Wednesday. Okay. Anything else, folks, today? Thank you
12 very much. Everybody can leave -- if you want to, you can
13 leave all your stuff here. But if you could, just -- I
14 guess kind of -- to the extent you can, just organize them
15 in a way just in case we have some other parties here.

16 Thank you very much. Have a wonderful week, and
17 a good Labor Day, and we will see each other next
18 Wednesday. Thank you.

19 MR. COOLEY: Your Honor?

20 THE COURT: Yes.

21 MR. COOLEY: I apologize. I apologize. Just one
22 last thing. Would it be possible for us to -- upon an
23 appropriate -- we will be filing a motion for substitute
24 service in connection with the Brass issue, and I just
25 wanted to preview that, so the Court knows it will be

1 coming. We'll be asking for expedited consideration of it.

2 I'm not asking the Court to rule, I just wanted to let the
3 Court know that would be coming.

4 THE COURT: You're just letting me know there's
5 going to be something on file?

6 MR. COOLEY: Yes, Your Honor.

7 MS. GOOTT: (Indiscernible - 4:30:15).

8 THE COURT: And just somebody -- people can file
9 stuff and I can rule on it. If there's something coming,
10 then I will know. That's -- I got it.

11 MR. COOLEY: Understood. Thank you, Your Honor.

12 THE COURT: All right, folks. Thank you.

13 THE CLERK: All rise.

14 (Proceedings adjourned at 4:30 p.m.)

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CERTIFICATION

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I, Jamie, Gallagher, certify that the foregoing
is a correct transcript from the official electronic sound
recording of the proceedings in the above-entitled matter.

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Jamie Gallagher

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Jamie Gallagher

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Dated: September 16, 2022

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3 Arthur Jacob Brass,)
4) CASE NO. 21-60025
4 Debtor.)
-----)
5 Vitol Inc.,) CASE NO: 21-06006
5) ADVERSARY
6 Plaintiff,)
6) Houston, Texas
7 Vs.)
7) Friday, September 16, 2022
8 Arthur Jacob Brass,)
8) 10:04 A.M. to 5:51 P.M.
9 Defendant.)
-----)

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1 HOUSTON, TEXAS; FRIDAY, SEPTEMBER 16, 2022; 10:04 A.M.

2 THE COURT: Okay. Good morning, everyone. This
3 is Judge Lopez. It is September 16th. I'm going to call
4 the 10:00 a.m. case, a continuation of the trial in Vitol v.
5 Brass. I see counsel for Vitol here and counsel for Mr.
6 Brass. Good morning to both of you.

7 MR. PATTERSON: (indiscernible).

8 Completely understandable. No disruption at all.
9 And please -- if you see her, please wish her the best from
10 me. No worries.

11 Why don't we kind of just talk housekeeping of
12 kind of where we are and what we hope to accomplish today.

13 MR. COOLEY: Judge, If I --

14 THE COURT: Go ahead.

15 MR. COOLEY: Thank you. If I may. Starting just
16 broad strokes. Obviously we expect to continue with Mr.
17 Kuo. Mr. Kuo is here today. He's sitting out in one of the
18 witness cubbies --

19 THE COURT: Okay.

20 MR. COOLEY: -- until we bring him in. And then
21 assuming that we conclude with Mr. Kuo today, and I assume
22 we will, then we are prepared to move from that to call Mr.
23 Brass and proceed with Mr. Brass.

24 I have two housekeeping notes just in terms of
25 witness issues. The first one is we learned from Mr. Dietz

1 -- today is Friday -- the day before yesterday, late Friday,
2 that he had suffered some kind of knee injury. I'm not sure
3 exactly what it is yet other than that I think it involves
4 the ACL and meniscus. The important question that we should
5 know the answer to in the next couple of days is whether it
6 is a tear that would require surgery. And if it is a tear
7 that requires surgery, whether he will have any kind of
8 travel restrictions for some period of time thereafter. We
9 will keep the Court and counsel informed on that, obviously.
10 But to the extent that that creates an issue and his
11 physical presence is required versus attendance by video --
12 and obviously we are sensitive to the fact that he is being
13 called as an expert witness, which is a particularly
14 sensitive witness to try and present in anything other than
15 a live format, they we may have to -- I don't know if we'll
16 have to keep the trial open. We'll have to figure that out.
17 But I wanted to just let the Court know about that.

18 THE COURT: Okay. Appreciate it.

19 MR. COOLEY: And again, we're waiting for more
20 information. We'll keep chambers --

21 THE COURT: Okay.

22 THE COURT: -- through the staff involved and
23 opposing counsel as well. And then the only other thing I
24 was going to note -- we alerted counsel to this yesterday or
25 Wednesday, I forgot when exactly, but fairly recently.

1 Since the last hearing, we have determined that we likely
2 will seek to call Mr. Bruzek, Mike Bruzek, who is another
3 Vitol employee who is on the witness exhibit list. And we
4 can take up any issues at the appropriate time. But I just
5 wanted to flag that for the Court since we had -- at our
6 last meeting we had indicated that were expecting to go Kuo,
7 Brass, Dietz.

8 THE COURT: Right.

9 MR. COOLEY: Right now I expect we will likely
10 call Mr. Bruzek. At least from our standpoint, the scope of
11 his direct will be fairly limited. He's being brought in to
12 address just a couple of issues. But I wanted to just put
13 that on the Court's radar as well.

14 THE COURT: Okay. All right.

15 MR. COOLEY: And I'm happy to answer your
16 questions. But that's all I had in my notes for just
17 general housekeeping.

18 THE COURT: Okay. I appreciate it. Ms. Goott, I
19 heard your -- I want you to come in, come out, do what you
20 need to do. And I hope everything is okay.

21 MS. GOOTT: Thank you, Judge. And I apologize for
22 coming in late. And I did hear the tail end of Mr. Cooley's
23 comments. And I know that we're not at this issue at this
24 point. But since we're telegraphing what's happening, Mr.
25 Bruzek was not on their initial disclosures. So we are

1 going to object to him. And I thought it only fair for him
2 to know before he brings him down since he just said that
3 he's going to talk to him about various matters. So we
4 don't know what that is. He wasn't disclosed.

5 THE COURT: Okay. And one thing I'm going to do -
6 - and I can describe it later on. I looked at various cases
7 and thought about the issue of the seal versus the
8 redaction. And I'm going to require a redaction. I think
9 it's consistent with First Circuit caselaw and also
10 consistent with our local rules. I'd also require a
11 redaction and I'm giving everyone just now Local Rule 7037 -
12 - 9037. That's -- you know, I think it applies here as
13 well. The sealing of documents is discouraged.

14 If the parties were in agreement on it, I probably
15 would think differently about that scenario. But unless
16 somebody tells me differently -- third parties can really
17 brief it if they want to, but I am going to require the
18 redaction, but I'm going to give everyone plenty of time so
19 that by the time the record is over -- so folks have got two
20 weeks to get it done and can get it in at the appropriate
21 time. So that's the only housekeeping point that I had.
22 I'll let the parties figure out what needs to be redacted.
23 I don't think I need to get into that. But I think
24 everybody knows what it is. And it could be done
25 electronically. I probably created a bunch of work for some

1 paralegal, but it is what it is.

2 Are we ready to proceed?

3 MR. COOLEY: We are, Your Honor.

4 THE COURT: Okay. I see some new parties here. I
5 just want to make sure that the rule has been invoked and it
6 remains invoked. Are we good to bring Mr. Kuo in?

7 MS. GOOTT: I just wanted (indiscernible) Mr.
8 Brass is in the courtroom as he was ordered.

9 THE COURT: Okay. Good morning, sir. And you're
10 certainly free to stay.

11 So let's get Mr. Kuo in. We're continuing Mr.
12 Patterson's cross-examination. Is that right? Okay.

13 Mr. Patterson, just from a -- I won't hold you to
14 it. From a timing standpoint, how much -- do you have a
15 sense?

16 MR. PATTERSON: I think we should be done
17 lunchtime, late lunchtime. I hope. Unless I run into
18 something I am not anticipating.

19 THE COURT: Okay. Let's just work through it
20 then. Maybe we'll -- around 12:15 we'll take a look and see
21 where we are.

22 THE COURT: Mr. Kuo, good morning, sir. Mr.
23 Patterson, I've turned over to the podium access so you'll
24 have it whenever you want it. The screen is blank, but
25 whenever you're -- I just want to make sure I give you

1 connectivity.

2 I'm going to remind you, sir, that you are still
3 under oath. Okay? And we are going to continue with your
4 cross-examination.

5 CONTINUED CROSS-EXAMINATION OF ERIC KUO

6 BY MR. PATTERSON:

7 Q Good morning, Mr. Kuo. Just to verify a couple of
8 things. You haven't talked to anyone about your testimony
9 during the break?

10 A I have not.

11 Q Did you discuss it, ask anybody any questions?

12 A I asked them what time we were starting this morning.

13 Q All right. Anything about the content of what you
14 testified to?

15 A No.

16 Q Anything about any exhibits?

17 A No, sir.

18 Q Did you communicate electronically with anyone about
19 it?

20 A I did not.

21 Q All right. So let's -- I know it's been a couple of
22 weeks' break, and I want to make sure that we are both still
23 on the same page with respect to a couple of items, or
24 actually several items. But do you recall when we broke --

25 A The screen is blank.

1 THE COURT: Be careful what you ask for, Mr. Kuo.

2 THE WITNESS: That's correct.

3 BY MR. PATTERSON:

4 Q I apologize. I'm already scrambling here. Here we go.
5 And I think this is -- if you recall, this is where we ended
6 up. Do you remember us talking about this email?

7 A Yes, I do.

8 Q And we were talking about some statements that were
9 made in the email about how people had viewed the process up
10 to this point in August of 2017, correct?

11 A Yes, I remember.

12 Q And there were some allegations that you hadn't been
13 completely honest through the process with I guess Vault
14 individuals. Do you remember that?

15 A Yes, I remember us discussing it.

16 Q All right. And you disagreed with that, right?

17 A Yes.

18 Q All right. Now at this stage of the relationship,
19 let's call it August of 2017, what was your understanding of
20 the relationship between Vitol and GCAC and Mr. Brass?

21 A We were -- it was unfortunate that we weren't able to
22 move forward with the original agreement that we had laid
23 out. And so we were trying to find a work-around. So we
24 were a bit in limbo as to what that work-around would be.
25 And so that's I believe what the relationship was during

1 that time. We were trying to not dump them on the ground,
2 but to find a work-around and allow them a financing
3 arrangement which would allow them to continue doing
4 business.

5 Q But my question is during the first week of August of
6 2017, what was your understanding as a snapshot of the
7 relationship between GCAC and Vitol? Not what you were
8 working on and not what your feelings were about what you
9 were trying to do, but on that date, what was it? What was
10 the relationship?

11 A Do you mean during that month, or what particular day
12 are you talking about?

13 Q Pick a day. Let's say August the 1st, 2017.

14 A Honestly, I don't recall what I was thinking on August
15 1st, 2017.

16 Q Okay. How about August the 9th, 2017, the day of this
17 email on your screen?

18 A Okay.

19 Q You wrote this email, right?

20 A Yes.

21 Q All right? And you say, "Not sure if they want to
22 dissolve this." What is this?

23 A The potential JV we were looking at doing.

24 Q Well, if it's just potential, why are you needing to
25 dissolve it?

1 A Because we were going to leave it all together. We
2 were just going to part ways.

3 Q But again, if you weren't together, no need to part
4 ways, right? There's got to be something there to dissolve
5 if you're talking about dissolving. If there's nothing
6 there, don't you just say we're done?

7 MR. COOLEY: Objection, argumentative.

8 THE COURT: Overruled.

9 BY MR. PATTERSON:

10 A We -- well, we had been discussing business for a long
11 period of time. So you either just do not pick up the phone
12 and talk to each other anymore, or you try to find an
13 amicable way, a workaround. And that's what we were trying
14 to do.

15 Q All right. But again, these are your words in your
16 email. "Not sure if they want to dissolve this altogether."
17 And you're telling me you don't know what this is, right?

18 A Dissolve the relationship, dissolve everything. Just
19 part ways.

20 Q The relationship.

21 A Right.

22 Q What was that relationship?

23 MR. COOLEY: Objection, legal conclusion.

24 THE COURT: Overruled.

25 BY MR. PATTERSON:

1 A I don't know how you want me to describe a
2 relationship.

3 Q These are your words. I want you to describe it
4 however you were thinking.

5 A I didn't say anything about a relationship.

6 Q You just did, sitting here right now, you did.

7 A But in this email it doesn't describe that. You said I
8 wrote that. I did not write that.

9 Q You wrote this email, and you just described it as a
10 relationship right now under oath. I'm asking you what are
11 you talking about in this email, to dissolve?

12 A I just told you. I said to dissolve what we were
13 working on altogether. The entire project we were working
14 on. We were looking to either continue or remove it
15 altogether.

16 Q And in your words, wasn't really anything there to
17 begin with, right? Is that accurate? Other than talk.

18 A There was multiple iterations of drafts that we had
19 proposed throughout the time.

20 Q Right. Nothing but talk. Is that accurate?

21 A No, not talk. There was many papers back and forth.

22 Q Okay. Nothing but communication about what could be,
23 right? Is that what you're suggesting?

24 A That's what I'm saying.

25 Q Right. So let's keep going through your email. "Not

1 sure if they want to dissolve this altogether or not. But
2 feels like sometime --" but maybe something, "-- extreme is
3 going to happen soon. Meaning they will just walk away and
4 do this with another party and Vic will be forced to pay
5 some of the damages." Do you see that?

6 A Yes.

7 Q And those are your words again, right? This is your
8 email?

9 A Yes.

10 Q Okay. Explain if there was nothing that you can
11 describe in the form of a relationship between Vic and GCAC
12 and Mr. Brass, why do you write, "Vic will be forced to pay
13 some of the damages"?

14 A Because I didn't know what was going to happen going
15 forward.

16 Q No, that's not what you said. You didn't say I don't
17 know what's going to happen.

18 A I did.

19 Q You said "Meaning". Do you see that? "Meaning".
20 You're explaining your prior sentence, right? Correct me if
21 I'm wrong.

22 A I'm just saying I didn't know where this was going.
23 That's what this implies, and that's what I wrote. That's
24 what I meant when I wrote that. I didn't know where we were
25 going with this because there were so many items in limbo

1 and we didn't know where the deal was going.

2 Q Are you suggesting today now under oath that as of
3 August the 9th, 2017, you didn't believe there was a joint
4 venture between Vic and GCAC and Mr. Brass?

5 A No.

6 Q Okay. Well then maybe we ought to go back in time a
7 little bit.

8 MR. PATTERSON: Give me one second, Your Honor.

9 I'm sorry, I need to...

10 THE COURT: Take your time.

11 BY MR. PATTERSON:

12 Q I apologize for the delay, Mr. Kuo. Okay. I have put
13 up here what has been marked as Brass Exhibit 104-5. I'm
14 going to ask you -- and I'll scroll this, and tell me if you
15 recognize this email. Tell me to slow down if I need to.

16 This is the end.

17 THE COURT: Mr. Patterson, before you let the
18 witness answer, is the last email that you showed -- what
19 was the -- what was the exhibit on that one?

20 MR. PATTERSON: Brass 13.

21 THE COURT: Brass 13? Thank you, sir. I
22 apologize.

23 MR. PATTERSON: And I should have -- I'm sorry for
24 putting it up without telling everyone what it was.

25 BY MR. PATTERSON:

1 Q Do you see this -- I'm sorry. Do you recognize this
2 email?

3 A I do.

4 Q You do? And as far as you can tell it's a true and
5 correct copy of the email string you were involved in?

6 A I believe so.

7 MR. PATTERSON: We would offer Brass Exhibit 5,
8 Your Honor.

9 THE COURT: Any objection?

10 MR. COOLEY: No objection, Your Honor.

11 THE COURT: Okay. And just for the record, would
12 that be 104-5? Is that right?

13 MR. PATTERSON: 104-5. Yes, sir.

14 THE COURT: Okay. 104-5 is admitted.

15 (Brass Exhibit 104-5 entered into evidence)

16 BY MR. PATTERSON:

17 Q And you'll see we'll start at the bottom. We're going
18 to go back in time. Because, remember, we were talking
19 about August 9th and you said no joint venture as far as you
20 know, right?

21 A We had been discussing one, yes.

22 Q But there wasn't one in your mind today.

23 A There was not a signed joint venture.

24 Q Okay. I haven't said anything about a signed joint
25 venture. Right? Forget about signatures. In your mind,

1 was there a joint venture, a business joint venture between
2 Vic and GCAC and Mr. Brass in July or August of 2017?

3 A There was one being proposed.

4 Q That's not my question. My question is yes or no.

5 Right? In your mind, was there a business joint venture or
6 venture, however you want to use the word, between Vic on
7 the one hand and GCAC and/or Mr. Brass on the other?

8 A As I said, we had proposed one, but then none had been
9 signed.

10 Q Okay. And again, remember I said forget about
11 signatures. Ignore signatures.

12 A I can't ignore that.

13 Q Okay. But I'm asking you to. And you're going to need
14 to today. All right? Forget about a writing. I'll --
15 let's make it a hypothetical. There is no writing. There
16 was never drafts, there was nothing. Were you operating as
17 if there was a joint venture between Vic and GCAC and/or Mr.
18 Brass in July/August of 2017?

19 MR. COOLEY: Objection. Legal conclusion.

20 THE COURT: Overruled. I think the witness can
21 answer the question. He is the businessperson working on a
22 joint venture. Did you think there was an informal joint
23 venture?

24 THE WITNESS: We were working --

25 THE COURT: That's not what I asked. Did you

1 think there was an informal joint venture, yes or no?

2 THE WITNESS: Informal, yes.

3 THE COURT: Thank you.

4 BY MR. PATTERSON:

5 Q Right. And was that informal venture active on July
6 13th, 2017 to the best of your recollection?

7 A Yes.

8 Q I'm sorry?

9 A Yes.

10 Q Right. And so this is going to put -- make these
11 emails make a lot more sense, right? Mr. Brass sends you an
12 email along with some others, says is there any reason you
13 guys see that we shouldn't let Gravity know -- who is
14 Gravity?

15 A I think we already covered that, no?

16 Q For the record, yes, we did. One sentence briefly
17 would help the Court and everyone here and the record. Who
18 is Gravity?

19 A Gravity was the owner of a storage terminal.

20 Q Right. "Is there any reason you guys see that we
21 shouldn't let Gravity know, even if it's just informally,
22 that Vitol is taking Rio's place?" Do you remember that?

23 A Yes.

24 Q Right. And that is in reference to Vic going in and
25 buying out Rio's portion of an existing joint venture that

1 Rio was in with GCAC, correct?

2 A No.

3 Q Okay. Explain it then.

4 A That is --

5 THE COURT: Please continue.

6 BY MR. PATTERSON:

7 A That is just taking Rio's lease in that terminal.

8 Q Was that just a typo where you said place instead of
9 lease? Is that a typo?

10 A Place could mean the place in the terminal.

11 Q Of course it could. It could mean lots of things. I'm
12 asking you if that's a typo. Did you really mean to say
13 lease since that's what you're saying here today?

14 A I don't recall.

15 THE COURT: Hold on a second, Mr. Patterson. I'm
16 going to mute the line in every portion of this trial from
17 now on forward. It is impossible that such few people
18 cannot put a phone on mute, but we're not dealing with this
19 anymore. Just a second, Mr. Patterson. I apologize.

20 MR. PATTERSON: Not a problem.

21 BY MR. PATTERSON:

22 Q So are you suggesting that that was a typo sitting here
23 today?

24 A I don't know if it's a typo, but -- I don't know.

25 Q That's not what you meant. That's what you're saying

1 under oath, that's not what you meant. You meant lease,
2 very limited, versus stepping into their shoes, taking their
3 place, right?

4 A I meant lease.

5 Q Okay. You weren't suggesting that there was a joint
6 venture going on in July of 2017?

7 A Informally, yes.

8 Q Okay, informally. And then you reply, "I thought we
9 were going to notify them of the transfer of counterparts.
10 No reason not to approach them that I can see." Right?

11 Letting them know. Is this one self-explanatory or does it
12 not read as it should in your mind today?

13 A I can explain.

14 Q I'm sorry?

15 A I can explain it.

16 Q And my question is does it need explanation, or is it
17 clear? And my reference is to the prior email, right? Is
18 it clear?

19 A To me it is.

20 Q Okay. And then Mr. Barth replies also, "Probably
21 better than letting them find out through the market."
22 Right? And then a separate reply from you. I mean, from
23 Mr. Brass which folds up some prior responses, right?

24 "Agreed. We will certainly do that formally in writing. I
25 just thought a verbal heads-up would be appreciated so they

1 don't hear from someone else first and knowing what's going
2 on." Right? So in your mind in July of 2017, there is this
3 informal joint venture going on, right? I'm not trying to
4 put words in your mouth. That's what you said, right?

5 A Okay, yes.

6 Q Okay. And how far back did this informal joint venture
7 start?

8 A The discussions?

9 Q No. Forget about discussions. Forget about writings.
10 We're talking about the informal business relationship
11 between Vic and GCAC and Mr. Brass.

12 A Probably when we first purchased the product from Rio.

13 Q And when was that?

14 A Beginning of July.

15 Q Beginning of July of 2017. Somewhere in that range?

16 A I believe so.

17 Q You think that's fair?

18 A I think that's fair.

19 Q And if the evidence showed you purchased that produce
20 from Rio or you purchased their position from Rio a little
21 bit sooner, then you would go with that sooner date, right?

22 A I don't know what date -- I mean, if you're telling me
23 there's another date, then...

24 Q No, I'm not trying to trick you. I'm asking you. You
25 believed that was the triggering event, whenever it

1 occurred, when Vic went in and purchased Rio's product I
2 think you said. Right?

3 A Yes. That's when we were a bit pressured to begin
4 purchasing the product.

5 Q Who is we?

6 A Vitol.

7 Q Someone pressured Vitol?

8 A Yes.

9 Q The largest commodities trader in the world, privately
10 Held, was pressured to do something?

11 A Yes.

12 Q By whom?

13 A By Rio and GCAC.

14 Q Okay. And I've put on the screen, or it's coming up on
15 the screen, it's been marked as Brass 104-6. 104-6. I'm
16 going to scroll through it as before and ask if you
17 recognize it. All right? And I'm scrolling from the bottom
18 to the top. Do you recognize that?

19 A Yes.

20 Q And this is an email -- well, tell me what you
21 recognize it as.

22 A An email.

23 Q Were you a party to this email?

24 A Yes.

25 Q Does this appear to be a true and correct copy of that

1 particular email that you're a party of?

2 MR. COOLEY: Objection, Your Honor. I'm not sure
3 what we're looking at, but I want to note for the record
4 there's a Bates number in the middle of the page which is
5 unusual in my experience. I don't know if we're looking at
6 a document or a compilation or what we're looking at
7 exactly. The witness may recognize the content, but whether
8 this is an actual thread or compilation is unclear to me.
9 And I would object on that ground.

10 THE COURT: Okay. Mr. Patterson?

11 MR. PATTERSON: I'm sorry, I didn't get what the
12 objection is. It's been identified by the witness. Is he
13 arguing with his own witness? I'm not really sure, quite
14 frankly. Just because he doesn't recognize something, I'm
15 not sure what that means. I don't know what that objection
16 is.

17 THE COURT: I guess my understanding of the
18 objection is whether this is a source of where this document
19 came from and whether it's a string or a compilation or it
20 came from somewhere else.

21 MR. COOLEY: Your Honor, if I were to articulate
22 it more precisely, I guess I would say --

23 THE COURT: I would appreciate it.

24 MR. COOLEY: -- I object to this document as it
25 appears to be manipulated in some way from its original

1 form. The witness may recognize individual emails, but the
2 document has hallmarks that suggest that it may have been
3 manipulated from its original form. Maybe counsel can tell
4 us. But that's my objection.

5 MR. PATTERSON: Again, we have a new fact witness.
6 He's testifying as to authenticity of this document. He's
7 arguing with his own witness. I am happy to put Mr. Cooley
8 on the stand, but --

9 THE COURT: That's not what we're going to do.
10 The question is just this --

11 MR. PATTERSON: If he's suggesting that I've
12 manipulated the document, I have not.

13 THE COURT: Any objection? That's all I needed to
14 hear. We can proceed.

15 MR. PATTERSON: Thank you, Your Honor. I would
16 ask the Court to admit 104-6.

17 THE COURT: Any objection?

18 MR. COOLEY: None beyond those I've asserted
19 already, Your Honor.

20 THE COURT: Okay. And those have been -- it's
21 admitted. 104-6 is admitted.

22 (Brass Exhibit 104-6 entered into evidence)

23 MR. PATTERSON: Thank you, Your Honor. And for
24 the record, I will verify when we have a break. But the
25 only thing that has happened to any of these exhibits is

1 there were some highlights on them that I deleted before I
2 put them on the screen, and that's it. But I will go back
3 and find this source and make sure this is complete. If
4 it's not, I will notify the Court, we will retract it, and
5 we'll start over.

6 THE COURT: Okay. Thank you.

7 BY MR. PATTERSON:

8 Q And so in July -- on July 25th, 2017, you wrote, "The
9 newco was merely their suggestion to separate GCAC from
10 their prior businesses and have a clean start to this joint
11 venture." Do you see that?

12 A Yes.

13 Q So July 25th you were referring to this informal
14 relationship as a JV, right?

15 A Informal, yes.

16 Q I think that's what I said, informally. Informal joint
17 venture. That would be accurate, right?

18 A Yes, informal, yes.

19 Q All right. "If it's an issue, they would revert back
20 to GCAC. The cost into this venture are for their four
21 people --" Do you see that? "-- which are dedicated solely
22 to this venture."

23 A Yes. This was a proposal, yes.

24 Q All right. And so you knew in July, late July of 2017,
25 that GCAC was actually expending money, they were making

1 investments in reliance upon this joint venture, right?

2 A I don't know that. I don't know the answer to that.

3 Q Well, you say right here. "The cost into the venture
4 are for their four people in their organization which are
5 dedicated solely to this venture." They're hiring four
6 people --

7 A They already worked there.

8 Q I'm sorry?

9 A They already worked there.

10 Q So now you know who they are?

11 A Yes. We discussed this.

12 Q We did? We being whom?

13 A With GCAC.

14 Q VIC and GCAC discussed this?

15 A Yes.

16 Q Who at VIC, you?

17 A Yes. We were discussing the structure of the potential
18 JV and the potential newco.

19 Q Actually, we've already established it's more than
20 potential. It was this informal venture, right? Informal
21 joint venture.

22 A Okay.

23 Q No? Don't give me okay. Do you agree or disagree? I
24 thought we figured that out and you agreed with the Court
25 when he pressed you that this was an informal joint venture,

1 right?

2 A I agree.

3 Q All right. And you keep pushing back on that as if --
4 and I don't want you testify under oath to something you
5 don't believe. You believe that, right? You understand
6 that.

7 A Yes.

8 Q All right. And so this informal joint venture, you
9 also knew that there were costs that GCAC was incurring and
10 going to incur in reliance upon this, right?

11 A I'm sorry, repeat the question again?

12 Q You knew that GCAC was going to incur costs,
13 expenditures, expenses in reliance upon this informal joint
14 venture, right?

15 A If you're -- define costs. I mean, I don't know what
16 their costs were. I didn't get into their side of the
17 ledger. But their people, their four people that is
18 described here, were employees that they already had.

19 Q "Initially GCAC were to provide all the support for the
20 business in terms of procurement, blending, marketing, and
21 sales. If vault were to enter into this and add personnel,
22 then we would need to revise the contract." Do you see
23 that?

24 A Yes, I see that.

25 Q All right. And so you even in July of -- late July of

1 2017 knew that Vault would have some input into this joint
2 venture, right?

3 A We were trying to have Vault be a part of this.

4 Q And my point is on July the 25th, 2017, you knew two
5 things; that there was an existing informal joint venture
6 with GCAC and Mr. Brass and Vault had some input as to how
7 it was going to operate, right?

8 A We were trying to find a way for Vault to enter into a
9 JV with GCAC. I was trying to step off of this and allow
10 them to try to figure out a way to do business together.

11 Q And again, I know that we've talked about this, but
12 it's been two weeks, so bear with me. Who is Nick Fay?

13 A Nick Fay was the head of Vault.

14 Q He ran Vault out of London, right?

15 A Yes.

16 Q All right. And so he responds to you, "We do." We
17 being who, Vault?

18 A I assume so. I don't know. I didn't write the email.

19 Q Well, it's from Mr. Fay, and he's in charge of Vault,
20 right?

21 A Yes, he is.

22 Q All right. "If you want us to give you a view within a
23 reasonable timeframe, we need everything you have. So far
24 we have zero financial information other than a flat P&L for
25 Rio, GCAC since January of 2015." So he knew about Rio

1 also, right?

2 A I would assume so based on this email.

3 Q All right. How does this thing make money? Why would
4 VIC want to commit to pay \$2 million a year for tankage fees
5 plus half the cost for a four-man team?" So he even
6 understood. Vault in July even understood the joint venture
7 was that VIC would pay half the cost, right?

8 A These were just hypotheticals. These were just
9 proposals.

10 Q No. You told me there was an informal joint venture on
11 July 25th, 2017. Was there not?

12 A I think we're talking about the newco now.

13 Q Where does it say newco? I'm sorry.

14 A On the email below.

15 Q Yeah. It says it was merely a suggestion. It doesn't
16 say it's part of -- are you suggesting that the joint
17 venture, this informal joint venture was with someone other
18 than GCAC and/or Mr. Brass in July of 2017. Is that your
19 suggestion?

20 A I don't understand the question.

21 Q All right. Let's break it down. Are you suggesting --
22 do you understand that part of the question?

23 A Yes.

24 Q Okay. Are you suggesting in July of 2017 there was a
25 newco involve in this informal joint venture?

1 A That was the name of the proposed joint venture, the
2 informal joint venture that we were working under. That was
3 the moniker for the name. We hadn't come up with a name.

4 Q Oh, okay. So when I see newco, it means --

5 A It means new company.

6 Q Hold on. When I see the letters n-e-w-c-o, newco,
7 that's a reference to this informal joint venture?

8 A Yes.

9 Q All right. Back to my original question though. Mr.
10 Fay even understood that this informal joint venture
11 required VIC to pay half the cost, right?

12 A It didn't require. These were all proposals.

13 Q You don't have a proposal in an informal joint venture.
14 You were operating an informal joint venture. Isn't that
15 correct?

16 MR. COOLEY: Objection. Argumentative and
17 mischaracterizes prior testimony.

18 THE COURT: I'll sustain.

19 BY MR. PATTERSON:

20 Q July 25th, 2017, there was an informal joint venture
21 operating between VIC and GCAC and Mr. Brass. Isn't that
22 correct?

23 A That's correct.

24 Q All right. And there are terms to that joint venture,
25 right?

1 A Terms that were not agreed upon, all agreed upon.

2 Q All, I agree. But Mr. Fay believes that half the cost
3 is going to fall on VIC, right?

4 A That was just a proposal.

5 Q Right. And then you end up this string by basically
6 following up are we going to have a call, right? Right? I
7 need you to answer on the record. I'm sorry.

8 A I believe so, yes.

9 Q Okay. I'm going to put up on the screen what's been
10 marked as 104-7 and ask you to look at it as I scroll
11 through and see if you recognize it. And again, tell me to
12 slow down if I'm going too fast. Okay, I've scrolled
13 through it. And if it wasn't too fast, do you recognize
14 that?

15 A It looks familiar, yes.

16 Q All right. And what is it?

17 A An email.

18 Q Are you a party to this email?

19 A Yes.

20 Q Does it appear to be a true and correct copy of that
21 particular email string?

22 A It appears so.

23 MR. PATTERSON: We would offer 104-7, Your Honor.

24 THE COURT: Any objection?

25 MR. COOLEY: No objection.

1 THE COURT: 104-7 is admitted.

2 (Brass Exhibit 104-7 entered into evidence)

3 BY MR. PATTERSON:

4 Q All right. Let's start at the bottom. And this is
5 again in late July. This is July 24th, 2017. And Mr. Fay,
6 head of Vault, intimately involved with you in finalizing
7 the structure of this informal joint venture, right?

8 MR. COOLEY: Objection. Mischaracterizes prior
9 testimony.

10 THE COURT: Sustained.

11 BY MR. PATTERSON:

12 Q Let's go through it. Mr. Fay writes you an email and
13 copies a few other people, including Mr. Sergeant. And
14 again, just as a summary, Mr. Sergeant is the outsider, but
15 probably the largest interest holder in Vault, would you
16 say, other than VIC?

17 A I don't know.

18 Q All right. But he is involved with Vault as well,
19 right?

20 A Yes.

21 Q All right. "Morning, Eric and Ernie." Ernie Kohnke.
22 Who is Ernie Kohnke?

23 A Ernie is the general counsel for Vitol.

24 Q All right. So Mr. Fay, who runs Vault, is sending you
25 and general counsel an email. "We are trying to get our

1 heads around this deal. We are not clear what the role of
2 the newco is." And newco we know is the informal joint
3 venture. "And more importantly, what is the costs? Please
4 can you share whatever you have on this. Thanks, Nick." Do
5 you remember getting this email July of 2017?

6 A Vaguely, yes.

7 Q And then Nick, Mr. Fay, follows up the next day, same
8 participants. "Anything you can share on this, Eric?" You,
9 right? He is directing this to you. Why would he direct
10 this to you for detail?

11 A Because I was the point man on the informal JV.

12 Q Right. You were the inside guy over here, right?

13 A One of them, yes.

14 Q But you were the point man.

15 A Yes.

16 Q All right. "Anything you can share on this, Eric? We
17 are hearing rumors of a four-man team, including an asphalt
18 trader." Which makes sense thinking about the earlier
19 exhibit, right, when you were discussing the cost of the
20 four people that GCAC was going to dedicate to this newco,
21 to this joint venture. Right?

22 A They could have put 400 people on there. I mean --

23 Q I understand they could have. But we know they put
24 four, right?

25 A No, I don't know that. I don't know they put four.

1 These were all proposals. These were talking points that we
2 were going through.

3 Q Right. And you respond, the newco was really their
4 suggestion to separate -- this is really the response that
5 we saw in the earlier exhibit, right? Your response to this
6 question of rumors of a four-man team where you said the
7 cost of the venture for their four people in their
8 organization which are dedicated solely to this venture.

9 Right? That's what you responded to his question. They are
10 dedicating, they being GCAC, are dedicating four people to
11 this joint venture.

12 A That's what they're proposing, yes.

13 Q And then this is the conclusion of the prior exhibit,
14 would you agree with me?

15 A It appears to be, yes.

16 Q All right. I'm going to put up on the screen for you
17 what's been marked as 104-8 and ask if you would look at it.
18 And I'll scroll through it. It's one page. Do you
19 recognize this?

20 A Yes.

21 Q All right. And are you a party -- and what is it?

22 A It looks like an email.

23 Q Right. And are you one of the parties to these emails?

24 A It appears so, yes.

25 Q Do these appear to be true and correct copies of those

1 emails?

2 A I don't recall these emails exactly, but -- I don't
3 recall these emails. Hold on. Can I finish reading?

4 Q I'm sorry. Where do you want me to go? Right here?

5 A Right there. Yes, I recognize it.

6 Q All right. And my question was does this appear to be
7 a true and correct copy of that email that you recall?

8 A Yes.

9 Q All right.

10 MR. PATTERSON: I would offer 104-8.

11 MR. COOLEY: Limited objection to the admission of
12 the top email from Mr. Bake if it's being offered for the
13 truth of the matter asserted. If it's being admitted to
14 simply show the statement was made, to that limited extent,
15 we have no objection.

16 THE COURT: Mr. Patterson?

17 MR. PATTERSON: Well, we're not going to agree to
18 limit it. But, quite frankly, it would take me a minute.
19 But this email is already -- this top email is already in
20 evidence in another exhibit. But Mr. Kuo is a recipient of
21 this. He testified it's a true and correct copy. It's an
22 email that he received, and there's no reason to limit it.

23 MR. COOLEY: Your Honor, he is not the declarant,
24 at least not at the top email.

25 THE COURT: Well, if it gets in another way --

1 MR. PATTERSON: Chris Bake is -- it's Vitol. This
2 is a statement by Mr. Bake, or appears to be. He says it
3 is. And that's a party opponent. And it's admissible for
4 all purposes. It's not hearsay. And so I'm not sure --
5 just because they say they don't know, it's not excludable
6 for any other reason.

7 THE COURT: You answered my question. I was
8 trying to -- I said the bottom email is in. I just need to
9 understand -- a reminder of who Chris Bake was. Maybe you
10 can talk about that.

11 MR. PATTERSON: I can do that, Your Honor.

12 THE COURT: No, no, I think someone can just
13 answer the question.

14 MR. PATTERSON: Bake is a Vitol employee from --

15 THE COURT: I remember there were VIC employees
16 and there were more general Vitol employees.

17 THE WITNESS: Mr. Bake is with Vault.

18 MR. PATTERSON: That is not the testimony that
19 we've heard for a week, Judge.

20 THE COURT: That's fine. I just need to -- if
21 it's already in, then it doesn't really matter. But why
22 don't we just admit it now for the purpose of just -- it
23 says what it says. But I'll reserve judgement on that. And
24 if we can get some additional information, then...

25 MR. PATTERSON: I'll go back at a break or lunch

1 and I'll find the prior.

2 THE COURT: But he can testify to the bottom and
3 the top. It will come in -- bottom email comes in for our
4 purposes. Top email will come in for now, an email received
5 to Mr. Kuo. But that can come further -- I reserve your
6 right to address that at a different time.

7 MR. PATTERSON: Yes, Your Honor.

8 BY MR. PATTERSON:

9 Q Mr. Kuo, this top email, who is Mr. Bake?

10 A Chris Bake is a Vitol employee and a board member of
11 Vitol, who also oversaw Vault.

12 THE COURT: It's admitted for all purposes.

13 MR. PATTERSON: Thank you, Your Honor.

14 (Brass Exhibit 104-8 entered into evidence)

15 BY MR. PATTERSON:

16 Q Now, you write an email to Mr. Bake there at the
17 bottom, much earlier, in May of 2017, right? That's the
18 date of this?

19 A Yes.

20 Q And do you recall writing this email?

21 A I do.

22 Q All right. "I spoke with Mike." Who is Mike?

23 A Mike Loya.

24 Q Mr. Loya. And at the time he was your CEO, right?

25 A Yes.

1 Q "I spoke with Mike briefly this afternoon, but
2 (indiscernible) has resurfaced again after a couple of
3 years. You may remember we spoke about this venture a
4 couple of years ago with the Sergeant acquisition. We
5 tabled the discussion and GCAC partnered with Rio Energy."
6 Right? "In short, Rio's management are keen on getting out
7 of the business due to the risk, asphalt pricing's lack of
8 hedging mechanisms, and are trying to sell their interest.
9 Do you see that?

10 A Yes.

11 Q And you remember earlier today we talked about your
12 referencing purchasing Rio's position, right? And you said
13 it should have been a lease?

14 A That was just -- the lease was one component of it.

15 Q Right. We need to go back? Do you recall that
16 conversation? You referenced it as something else and you
17 said it should be lease, right?

18 A That was in reference to Gravity.

19 Q Okay. They're trying to sell their interest. "This
20 currently involves the blending of ETBs to finished spec in
21 both Corpus and Mobile, along with a take-or-pay rack system
22 in Corpus Christi. This would proceed even without the
23 purchase of the Gravity refinery." Right? Two months later
24 is when Mr. Bake responds, right?

25 A July 31st.

1 Q Right. The first of May, end of July. So that's three
2 full months before he replies, right?

3 A I think that's two months.

4 Q Well, May, June --

5 A Okay, three months.

6 Q Right? So three months, 90 days before he replies.

7 And he tells you, "Thank you for your time this AM." Do you
8 recall talking to him on the phone?

9 A Vaguely.

10 Q "As agreed, we are trying to cajole Dan into a
11 discussion with AJ." Who is Dan?

12 A Dan Sergeant.

13 Q How does he fit in? Who is he related to in this?

14 A he is an employee of Vault.

15 Q All right. Is he an executive with Vault, or what does
16 he do for Vault, did he do for Vault back in July of 2017?

17 A I don't know his exact position.

18 Q Have any authority?

19 A I believe so.

20 Q Right. "Aside from having one face to the market as
21 far as bitumen selling goes --" did I say that right?

22 A Bitumen.

23 Q Bitumen. "We have to cross a few other bridges like
24 competing with the likes of your own rack sales, which
25 precludes us from buying bulk from them in Central America

1 (indiscernible) there would need to be parameters agreed. I
2 really regret that when I received your heads up below,
3 Eric, on the proposition below, that I did not go back and
4 discuss more proactively with you the extent of the Vitol
5 involvement in the bitumen side. Anyway, we are where we
6 are. We need to try and find a way to make this work."
7 Right? Do you know -- what did you understand what he
8 meant, "We are where we are"?

9 A I think he meant the informal joint venture.
10 Q All right. I'm going to put up on the screen for you
11 104-11. And again, I'm going to scroll from the bottom and
12 ask you if you recognize this. And tell me if you need me
13 to stop.

14 A Okay. Hold on.

15 Q Good to go?

16 A Yes, you can scroll halfway. Okay. Okay.

17 Q Do you recognize this?

18 A I do.

19 Q And what is it?

20 A An email chain.

21 Q Were you a party to this email chain?

22 A I am.

23 Q And does this appear to be a true and correct copy of
24 this email chain in which you were a party?

25 A It appears to be.

1 MR. PATTERSON: Offer 104-11.

2 THE COURT: Any objection?

3 MR. COOLEY: No objection.

4 THE COURT: 104-11 is admitted.

5 (Brass Exhibit 104-11 entered into evidence)

6 BY MR. PATTERSON:

7 Q Okay. Start off early August of 2017, right? That's
8 kind of where we started today. You sent an email to
9 Bernadette Scambray. Who is that?

10 A She was our -- she is our commercial assistant. So she
11 takes care of -- not reconciliation, she takes care of all
12 of the trades, the systems. She does the P&L, she pays --
13 she just -- she manages all of our back office. Not all,
14 some of our more administrative things.

15 Q If you need a bill paid, you send an email to her,
16 right? Or you did in August --

17 A She doesn't pay the bills. She may be the conduit to
18 the next -- you know, to whomever in --

19 Q Would it be accurate to say that she makes sure it gets
20 done?

21 A Yes.

22 Q All right. And Mr. Abernathy, Lance Abernathy, who is
23 that?

24 A He worked side-by-side with Bernadette.

25 Q Same type, same --

1 A pretty much, yes.

2 Q -- responsibilities.

3 A Yes.

4 Q And you ask them, "Any idea if this will get paid
5 today?" And there is -- there was a PDF, some document
6 attached. Do you recall what that was?

7 A I don't. I don't.

8 Q Well, the subject, does the subject help you out any?

9 A It would appear so, but I don't know exactly.

10 Q No, I understand. It's five years ago. But does that
11 help you? Would you have put -- would you have put that
12 subject in your own email if it didn't somewhat describe
13 what you were attaching?

14 A No.

15 Q All right. So is it fair to say it's probably a
16 storage invoice?

17 A Most likely.

18 Q Right? And most likely a GCAC storage invoice?

19 A Yes.

20 Q All right. And you're asking an employee of Vitol to
21 issue a Vitol check for storage, right?

22 A Yes.

23 Q And in fact you referred to it as GCAC storage, right?

24 A Yes.

25 Q And you wouldn't do that unless the joint -- you

1 understood the joint venture required you to pay your half
2 of the expenses, right?

3 A We paid all the expenses.

4 Q All right. Pursuant to this informal joint venture,
5 right?

6 MR. COOLEY: Objection. Mischaracterizes prior
7 testimony.

8 THE COURT: He can answer.

9 BY MR. PATTERSON:

10 A I'm sorry, what was the question again?

11 Q Pursuant to this informal joint venture, you were
12 paying -- Vitol was paying the expenses.

13 A We paid the expenses for this, yes.

14 Q Right. Then you send another email to the same, to Ms.
15 Scambray -- am I saying her name right, Scambray?

16 A Yes.

17 Q And also you included Mr. Abernathy again. Jeanette
18 Wenn. Who is Jeanette Wenn?

19 A She was another -- she was similar position to
20 Bernadette and Lance.

21 Q Okay. And (indiscernible)?

22 A I don't recall exactly what her position was. She was
23 a back office person.

24 Q Okay. But you're talking to accounting payable people,
25 right?

1 A Yes.

2 Q All right.

3 A Well, I don't know if it's accounting. I don't know if
4 these are people in accounting.

5 Q But payables, right? You needed stuff paid.

6 A Correct.

7 Q All right. And you responded in response to Ms.
8 Scambray's earlier email -- excuse me -- in which she said,
9 "I have invoices of \$246,000 for July tank rental and
10 \$246,000 for August tank rental. Included in this invoice
11 is \$140,000 for actual tank rental at Mobile, Alabama and
12 then another 106 for July personnel expense. Same amounts
13 apply for August as well. I can attest to the validity of
14 these invoices. If you give the okay and agree with these
15 amounts, then we will pay them today. I just don't know
16 what is rightfully due them. The invoices are attached."

17 Do you see that?

18 A Yes.

19 Q Okay. What did she mean by the difference of tank
20 rental and actual tank rental, do you know?

21 A I don't know.

22 Q Okay. And then you respond to her and say, "Yes. That
23 is the right amount. Let's pay them today if possible."

24 Right?

25 A Yes.

1 Q And it's your understanding that pursuant to this
2 informal joint venture, those expenses were to be paid by
3 Vitol, right?

4 A That's correct.

5 Q Right. Ms. Scambray then responds to you, says, "Will
6 do. What's the personnel expense for? I thought this was
7 supposed to be a B2B deal." What is that?

8 A Back to back.

9 Q Okay. Do you understand what her question is?

10 A Yes.

11 Q All right. Explain it, because it doesn't -- if you
12 would explain it. What was her -- if you know, what was her
13 confusion based upon what she wrote?

14 A I believe -- and -- I believe what she understood this
15 to be is we were moving to a deal where we were just
16 financing the business for them. And it would be a back-to-
17 back deal where we were -- you know, we were paying it and
18 then we were receiving the money back from them at another
19 time.

20 Q All right. And then she says these are -- can I --
21 well, let's look. She then -- the next email is from Ms.
22 Scambray. She says, "These are now budgeted in Deal 1855791
23 under TRE for tank rental fees and under JVC for personnel
24 expenses since this could be reflected as a monthly draw??
25 This coding can be changed later if Eric disagrees. For

1 now, we need to pay these today. And the total is \$492,000.

2 Thanks."

3 And your response was, "We shouldn't be paying any

4 personnel expense; just storage costs." Why did that

5 change?

6 A Because we hadn't agreed on the terms of the informal
7 JV and hence there was -- we did not agree to have personnel
8 costs in this.

9 Q In fact, isn't it true, Mr. Kuo, because you were
10 operating under an informal joint venture, you were then
11 picking and choosing what you wanted to pay by August of
12 2017?

13 MR. COOLEY: Objection. Mischaracterizes the last
14 answer.

15 MR. PATTERSON: It was a question.

16 THE COURT: It was a question.

17 MR. COOLEY: Premised on a mischaracterization of
18 the last answer.

19 THE COURT: Overruled.

20 BY MR. PATTERSON:

21 A I'm sorry, can you repeat the question?

22 Q Isn't it true that since you were operating under this
23 informal joint venture by August the 4th, 2017, you were
24 picking and choosing what VIC chose to pay for, correct?

25 A No.